

# BUYER ADVISORY – Residential

There are certain aspects and risks associated with purchasing property. Buyer is advised of some of those aspects and risks as follows:

A. **Contract Review.** Under Colorado law, Broker is permitted to prepare Colorado Real Estate Commission approved contracts for Buyer. Additionally, there are several contract forms, such as HUD, bank owned and builder contracts that are not approved by the Colorado Real Estate Commission which Broker may also participate. However, the Broker's preparation and review of a contract is not a substitute for Buyer's attorney's review. Buyer is encouraged to review all contracts carefully and to have all contracts reviewed by Buyer's attorney; particularly those contracts not approved by the Colorado Real Estate Commission as Broker should not advise Buyer regarding those contracts.

B. **Earnest Money Disputes.** While there are several provisions in the Colorado Real Estate Commission approved contract for the Buyer to terminate and get the Buyer's earnest money back, sometimes it is not that simple. First, the Buyer must terminate prior to the applicable deadline and reason the Buyer is terminating must be related to the provision the Buyer is using to terminate the contract. In other words, a Buyer cannot just simply "change their mind." Second, sometimes sellers do not believe buyers when they terminate and may claim the Buyer acted in "bad faith" and demand the Buyer's earnest money even though the Buyer's reason for terminating was well within the contract. Once both parties make competing claims to the earnest money, the earnest money will be "frozen" until; 1) the parties reach an agreement (whether through mediation or otherwise) or, 2) a Court decides who receives the earnest money.

C. **Obtaining a Loan.** There are many different types of lenders and loans, each offering different interest rates, terms and costs. Buyer is encouraged to shop around for different loan alternatives. HUD publishes a "Shopping for Your Home Loan" booklet containing information about the loan process. Upon request, Broker can provide the Buyer with a copy. Also, on or before the "Loan Objection Deadline" in the Contract to Buy and Sell Real Estate, the Buyer will need to decide if Buyer is satisfied with the status of Buyer's potential new loan. If Buyer is unsatisfied, Buyer should consider terminating the contract. If Buyer is satisfied, Buyer may continue with the contract, however, Buyer's failure to close will likely mean the seller will claim the Buyer's earnest money.

D. **Wire Fraud.** Emails for parties in a transaction have come under attack by hackers which could lead to the Buyer inadvertently wiring funds to the hacker instead of the intended party. Anytime Buyer is supplying confidential information such as social security numbers or bank account numbers, Buyer should provide the information by phone instead of by email. This includes responding to what appears to be a legitimate email request for information from a participant in the transaction.

**E. Disclosures.** Sometimes the multiple listing service, online property listings, public records, contract and/or the Seller's Property Disclosure make representations that are false or fail to disclose material defects affecting the property. The Broker has no way of knowing what the seller, government and/or the listing broker failed to disclose and is under no duty to investigate the accuracy or omissions of any such representations.

**F. Buyer's Inspection(s).** Buyer's inspection of the property is an important part of the home buying process as Buyer typically is taking the property "as-is." If Buyer desires to have multiple inspections performed on the property by additional professionals, Buyer should do so prior to the "Inspection Objection Deadline" in the Contract to Buy and Sell Real Estate. Buyer should consider the following inspection concerns:

**1. Home Inspection(s).** There are several types of inspectors that specialize in different areas, for example: structural engineers; geotechnical engineers; roofers; plumbers; sewer line scopes; electricians; HVAC contractors; environmental professionals; industrial hygienists; surveyors; etc. Buyer is strongly encouraged to perform as many inspections on the property as Buyer deems necessary. Many home inspectors are certified through the American Society of Home Inspectors (ASHI) or the National Association of Home Inspectors (NAHI). The Brokerage Firm strongly encourages the Buyer, at a minimum, to hire a professional, certified, home inspector to conduct an inspection of the physical structure on the property. While a certified home inspector cannot guarantee that the home inspection will identify every single problem with the structure, a certified home inspector should investigate several different components.

**2. Environmental Hazards.** There are many different environmental hazards that may affect the property and/or the Buyer/Buyer's family's health. Such environmental hazards may include, but are not limited to: radon; lead-based paint; expansive soils; asbestos; formaldehyde; carbon monoxide; pet urine and/or dander; mold; prior methamphetamine (METH) use; and/or radioactive, toxic or biohazardous materials. The Agent strongly recommends the Buyer hire independent environmental professionals to perform any environmental testing desired by Buyer.

**3. Square Footage.** The square footage represented on the multiple listing service, square footage disclosure and/or other advertisements and disclosures may be approximate figures, may not have been measured and may not have been verified. If the Buyer is concerned about the square footage, Buyer should hire a licensed civil engineer or an appraiser of Buyer's choice to verify the square footage.

**4. Septic.** El Paso county does have a requirement for a septic system inspection, certification before a seller can sell the property. If Buyer is interested in purchasing a property that has a septic system, then the Buyer should check with the appropriate governmental entity to determine if there are any applicable requirements for the septic system.

**5. Water.** Under Colorado law, the seller is required to disclose the “source of water” for the property, however, it is the Buyer’s responsibility to investigate the water provider’s ability to provide sufficient water to the property long-term. Additionally, if the property has a well, the Buyer should review the well permit, and conduct tests of the well both for water production and potability.

**6. Remodeling.** Beginning April 22, 2008, the Environmental Protection Agency (“EPA”) issued a rule requiring the use of lead-safe practices for repair, renovate and paint projects that disturb lead-based paint in homes, child care facilities, and schools built prior to January 1, 1978. If Buyer has any intentions of ever remodeling a home built before January 1, 1978, the Buyer may want to test the home for lead-based paint and/or consult with a lead-based paint certified contractor.

**7. Insects, Parasites and Disease.** There are many naturally occurring insects, parasites and diseases that attack and potentially kill trees in Colorado. Some examples include, but are not limited to: mistletoe, bark beetles, emerald ash borer, tussock moth, scale, mites, aphids, rust disease, root rot, cankers, etc. If diagnosed early, many such tree ailments can be treated. The Brokerage Firm encourages Buyer to hire a forester to inspect the trees on the property. For more information, the Buyer may contact the local branch of the Colorado State Forest Service or visit their website at [csfs.colostate.edu](http://csfs.colostate.edu).

**8. Wild Animals.** The property may be located in an area populated with coyotes, foxes, bears, mountain lions, snakes or other wild animals. If Buyer is concerned about the proximity of wild animals to the property, Buyer should contact the Colorado Division of Wildlife.

**9. Other Matters.** In addition to the above, there may also be other matters that may affect the Buyer’s use and enjoyment of the property. Such other matters may include, but are not limited to: building permits for the improvements to the property; zoning of the property; encroachments onto the property; existing or proposed transportation projects, adjacent development projects; noise and/or odor. Brokerage Firm strongly recommends the Buyer thoroughly investigate all matters related to the property that matter to the Buyer.

**10. Inspection of Foreclosures, Short Sales and Bank Owned Properties.** If the Buyer is purchasing a property foreclosure, a short sale, or bank owned property, the Buyer may be purchasing a distressed property. Many times these types of properties are vacant and/or the sellers are unaware of major problems that may exist on the property. It is always important to consider obtaining appropriate inspections; however, inspections are even more important when buying a foreclosure, short sale or bank owned property.

**G. Surveys.** The lot size represented on the multiple listing service and/or other advertisements and disclosures may be approximate figures and may not have been verified. Many properties have not been surveyed for accurate lot size, encroachments or boundary line locations. The Agent encourages the Buyer to hire a surveyor to review the boundary lines, lot size and encroachments that may exist on the property on or before the “New ILC or New Survey

Deadline” in the Contract to Buy and Sell Real Estate. One less expensive product a Buyer may purchase from a surveyor to review lot size, boundaries and encroachments is an “Improvement Location Certificate” or “ILC,” however, an ILC is very limited in its scope and protection of the Buyer.

**H. Short Sales.** The Buyer may decide to make an offer on a property that is a “Short Sale” meaning that the purchase price offered by the Buyer is insufficient to pay all of the liens against the property and the seller’s costs of sale at closing. In order to close on a Short Sale, the seller’s lien holders will need to approve the Buyer’s contract before closing. The Short Sale process typically is a lengthy process and could take up to four months or longer to get a response from the seller’s lien holders. Even if the seller’s lien holders respond, the seller’s lien holders may reject the Buyer’s contract or the seller may reject the terms of the seller’s lien holder’s acceptance of the Short Sale. This could ultimately mean that the Buyer’s contract will terminate through no fault of the Buyer or seller. Buyer is encouraged to consult with legal counsel about Short Sales.

**I. Insurance.** The Buyer’s lender will require that the Buyer obtain homeowner’s insurance at closing. Even if not required by a lender (or if Buyer is paying cash), the Buyer should obtain homeowner’s insurance. While investigating homeowner insurance companies, Buyer should consider asking for a CLUE report on the property. A CLUE report gives details about claims that have been filed against the property in the past several years. The Buyer should make sure their insurance coverage is adequate for the property they are purchasing. For instance, some insurance carriers may have exclusions, reduced coverage or refuse to provide coverage for: high risk of forest fires, swimming pools, shake roofs, additional structures, etc. Additionally, the Buyer should check with the Buyer’s lender about whether the lender will be requiring flood insurance. Sometimes lenders require flood insurance if the property is located in the flood plain as identified by FEMA.

**J. Home Warranty.** A home warranty is a product that may be available for purchase at the time of closing that may cover some or all of the repair or replacement costs of several different components of the home. If Buyer desires to have a home warranty on the property, Buyer is encouraged to evaluate the terms of coverage and financial strength of the company offering the home warranty.

**K. Title Review.** The Buyer will receive a title commitment after signing the contract and before closing. The title commitment is the basis for the Buyer’s title insurance policy the Buyer will receive after closing. The title insurance policy is a critical legal document that often includes information about the Buyer’s ownership rights to the property. The Buyer is encouraged to retain legal counsel to review the title commitment before the “Title Objection Deadline” in the Contract to Buy and Sell Real Estate.

**L. HOA Documents.** Condominiums and some townhomes as well as some single family homes have mandatory membership in homeowner’s associations which may require fees from homeowners including monthly dues and special assessments and may impose requirements and restrictions on homeowners. The Buyer is strongly encouraged to seek legal counsel to

review the homeowner's association's governing documents and financial viability. Broker is unable to render any opinion on the financial stability, or legality of any homeowner's association.

**M. Special Taxing Districts.** The property the Buyer may want to purchase may be located in one or more special taxing districts. Special taxing districts are communities that have increased property taxes to pay for debt and/or services. For example, a newer community may have created a special taxing district to pay back debt incurred for roads, curb and gutter, parks, water lines, sewer lines, etc. Buyer should investigate the special taxing districts in which the property is located by contacting the county treasurer, by reviewing the certificate of taxes for the property and by obtaining further information from the board of commissioners, the county clerk and recorder or the county assessor.

**N. Seller Possession after Closing.** Sometimes sellers wish to maintain possession of their property for a short period of time after closing. While this is not unusual, this can also lead to problems for the Buyer. For instance: the seller may not move out on the specified date forcing the Buyer to evict the seller; the seller may damage the property on the way out; the short-term tenancy may violate local ordinances and/or HOA rules and regulations; the property may not have adequate (or appropriate) property insurance coverage after closing. If the Buyer is willing to allow the seller to occupy the property after closing, a post-occupancy agreement will be drafted for both Buyer and Seller signatures to protect both parties. Buyer's home owner's insurance will go into effect on the closing date and Seller/renter will obtain renter's insurance. Buyer is encouraged to seek legal counsel and discuss insurance coverage with Buyer's insurance agent for general liability (e.g. slip and fall) as well as casualty coverage (e.g. fire) for the property as well as potential other insurance coverage issues.

**O. FIRPTA.** The Foreign Investment Real Property Tax Act (FIRPTA) requires buyers purchasing property from a non-resident, alien investor ("Foreign Investor") to withhold a portion of the purchase price to ensure the Foreign Investor pays any tax they might owe. However, many title companies do not do the withholding and require the buyer to sign an indemnity agreement at closing which states that the buyer cannot pursue the title company if the buyer was required to withhold under FIRPTA. This means the buyer could be responsible for the amount that should have been withheld under FIRPTA plus penalties and interest. Buyer is encouraged to check with the title company early to find out if the seller is a Foreign Investor and if a portion of the purchase price will need to be withheld at closing. Additionally, buyer is encouraged to speak with a tax lawyer.

**P. Property Value.** Broker may provide information concerning the asking or sales prices of properties comparable to the property Buyer wishes to purchase. However, the Broker is not an appraiser and makes no warranties as to the value of ANY property. Buyer is strongly encouraged to obtain an appraisal prior to any Appraisal Deadline in the Contract to Buy and Sell Real Estate to verify the value of the property.

**Q. Recommendation of Professionals.** The Broker may provide the Buyer with names of lenders/mortgage brokers, inspectors, attorneys, accountants, appraisers, engineers, surveyors,

or other professionals. However, Broker cannot guarantee that such professional will provide the lowest price or the best service. Therefore, Buyer is strongly encouraged to interview several different professionals before choosing the professional of Buyer's choice. In the event Buyer is unhappy with a professional given to Buyer by the Broker, Buyer should notify the Broker of Buyer's dissatisfaction.