

LEASE/OPTIONS – LEASE/PURCHASES

There are buyers who want to buy but for various reasons, they are not favored by the money gods. For that reason, Leases, coupled with an option to purchase or a purchase contract, are more prevalent. It is a misconception that the deal is no more complicated than preparing the standard purchase contract and attaching a lease to it. It is imperative that, at the beginning of negotiations, everybody is clear as to what type of transaction they are negotiating.

In both transactions, a lease and a purchase agreement are usually signed before the "buyer" takes possession. If it is a lease/option agreement, the buyers are really not buyers, they are tenants who, at their option, have the right to purchase the property some time during the term of the lease. The key is that it is only an option and the Tenant, alone, has the right to determine whether they will exercise that option and become a buyer. In a lease/purchase, you have a buyer with the right of early possession. There is no option that the buyer exercises because the buyer has agreed to close on a particular date in the future. Buyer's failure to close would constitute a breach of contract. Due to the legal differences between these two transactions, you should make sure that the negotiations are specific as to the type of deal—use express language stating that you are negotiating a lease with an option to buy, or a lease/purchase agreement. If it is a lease/purchase, put in language that expressly states that this is not an option, but actually a contract to buy.

A standard residential lease will not address all the issues that need to be addressed regarding these two types of transactions. Ohio Revised Code §4735.02, the Ohio Real Estate Licensing Chapter, specifically prohibits real estate agents from performing any "service for another constituting the practice of law". The preparation of a lease does, in fact, constitute the practice of law.

These transactions are not for the faint of heart. There are many complex issues that need to be addressed. Difficult legal issues must be addressed during negotiations by both buyer's agent and seller's agent. A few to ponder: If you are a buyer's agent, title needs to be checked prior to buyer taking possession to insure that the seller will be able to close and transfer clear title. The status of existing mortgages needs to be addressed. Issues relative to the deposit and when and if it is refundable have to be negotiated. The seller's agent needs to address the seller's due diligence as far as a credit check and references regarding the buyer. The inspection should be completed prior to the buyer taking possession so that issues regarding maintenance, repairs and replacements "AS IS" can be addressed in the purchase contract and/or lease. There are many other issues that you will need to consider so be cautious when negotiating these types of transactions.

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