



LAND ACQUISITION PROCESS

Submitting an offer

Offers to purchase are usually submitted in writing, and at times are accompanied by a modest down payment, or “earnest” money. The purchase document can be prepared by an attorney, or more commonly is based on standard language. Agreements can be submitted “subject to legal review” at a later date. Brokerage agents are required by law to pass on to sellers any legitimate offer received.

Terms included are at the discretion of the purchaser. In addition to price, terms may include:

- deposit amount
- closing date
- financing contingencies

- verification of various property characteristics (quality of title, legal access, environmental audits, timber volumes, acreage, etc.)
- procedures to remedy problems that arise from these areas
- any other matter the purchaser wishes to include

Negotiations over price and terms will then proceed, often orally. Once terms are conceptually agreed upon, attorneys are usually (but not always, depending on complexity of the deal) brought in to develop the final agreement language around the agreed terms. A **final written agreement** is then circulated for signature and, once signed, binds the two parties and almost always removes the property from the open market. Commonly, a substantial deposit, often 5 to 10 percent of the purchase price, is then due.

Post-agreement activities

The main activities that occur between signing of the agreement and closing are:

Title Examination – The buyer (through his or her attorney) must verify the quality of the title, i.e. that the property is legally as the seller has represented it, and that there are no outstanding legal claims that would cause the quality of the title to be questioned. This is often the most significant and costly activity of the attorney, depending upon the complexities of the title and transaction history.

1. **Deed Preparation** – The seller (through his or her attorney) must prepare the new deed, to be recorded as the legal record of the transaction. The buyer’s attorney will review and approve.

2. **Contingencies** – Contingencies and term conditions will be addressed. Responsibility depends upon negotiated terms. Most contingencies are executed by purchaser and funded by same.
3. **Type of Ownership** – Buyer and his or her attorney determine how the title will be taken.

Closing

Assuming no problems arise, closing usually takes place 60 days after the purchase contract is signed, although this can be as little as 30 days or in excess of 120 days.

Closing costs include attorney's fees, recording fees and transfer taxes. Attorney's fees can vary substantially, depending upon the size of the purchase and complexity of the agreement. Buyers are encouraged to purchase title insurance, a one-time, relatively modest expenditure that protects the buyer if a title flaw emerges at a later date.

On larger land transactions, purchasers often do a **Phase I Environmental Audit** for a relatively modest cost. This audit includes a physical inspection by an environmental engineer and a historical review of past uses, which is designed to minimize the buyer's exposure to environmental liabilities.

Costs to complete other contingencies and terms will vary with the activity. Property transfer taxes vary state to state but are rarely onerous.

Annual liabilities and anticipated revenues such as local property taxes and lease incomes are usually prorated between buyer and seller. Property taxes are variable and depend on location, site amenities and whether the land is enrolled in a state forestry tax reduction program. Lease income fees are variable.

Immediately following the closing of the deal, the **new deed** is legally recorded in the public record. Deed records are usually kept by the county, but in some states are kept by the town. In all cases, this recorded deed represents and permanently protects the legality of the transaction.

Selecting an attorney

Laws governing real estate transactions are, for the most part, under the jurisdiction of the state in which they occur. Similarly, attorneys are licensed by each state for practice of law.

fountains land maintains a list of attorneys who are appropriately licensed and experienced in land transactions in all states that we operate in.

Ownership structures

Title to real estate in the US can legally be held through a variety of structures:

- direct ownership by individuals
- wholly owned US or non-US corporations
- partnerships
- limited partnerships

- various trust vehicles

Individual states, however, may limit some of these options. The legal ramifications of the proposed ownership structure should be reviewed with the purchaser's attorney prior to purchase. Likewise, tax ramifications of different ownership structures will depend upon not only the applicable state tax laws, but the specific situation of the purchaser, and should be reviewed with a qualified tax adviser prior to purchase.

OTHER CONSIDERATIONS

Planning approval

New building approval for a single dwelling is generally automatic, providing that the property has the minimum requirements of length of town-maintained road frontage, usually around 200 feet, and a minimum lot size, ranging from 1 acre in many towns to up to 46 acres in the Adirondack Park. Consequently, the subdivision of properties is controlled to restrict undue and uncontrolled development.

Timber values

Current timber valuations result from **timber cruises**, which collect a stratified random sample of the data on each forest, which is then multiplied to form an idea of the volumes of the various products of the whole forest. Cruises can be of varying intensity and statistical accuracy.

Product values are based on comparable timber sales as well as published price lists, but are always tempered according to the specific characteristics of the property. Valuations identify current market value of the timber as it stands, with no allowance for future expectation.

Timberland risks and insurance

Fire insurance for timber crops is not normally recommended since hardwood forests do not burn easily, the incidence of fire is minimal and local fire control is very effective. Also, the salvage values for larger trees are often the same as if they were undamaged since damage is superficial. Smaller trees are not valued and therefore no loss would be recognized in this size class. Premiums are influenced by South Eastern and West Coast experience where climatic conditions and the nature of the crops make for higher risk.

Windstorms and ice storms can occur, but are not common and are rarely widespread in their effect.

Insect and fungal damage is rarely a serious threat in what are basically natural stands containing a wide diversity of species, inherently resistant to such threats, but occasionally pests or disease can cause problems. An example is the Gypsy Moth, which has caused widespread defoliation in the past during its population peaks, but which tends to cause mortality only after subsequent repeated infestations. In managed stands, in particular, mortality from such outbreaks is rarely widespread, and is usually salvageable.

Comprehensive general liability insurance (Third Party All Risks) **is recommended**. Clients managed by **fountains land** are automatically covered under the terms of **fountains'** policy at a modest premium (less than \$1/acre/year) unless they expressly request to make their own arrangements.

Contact us for additional information and assistance.