

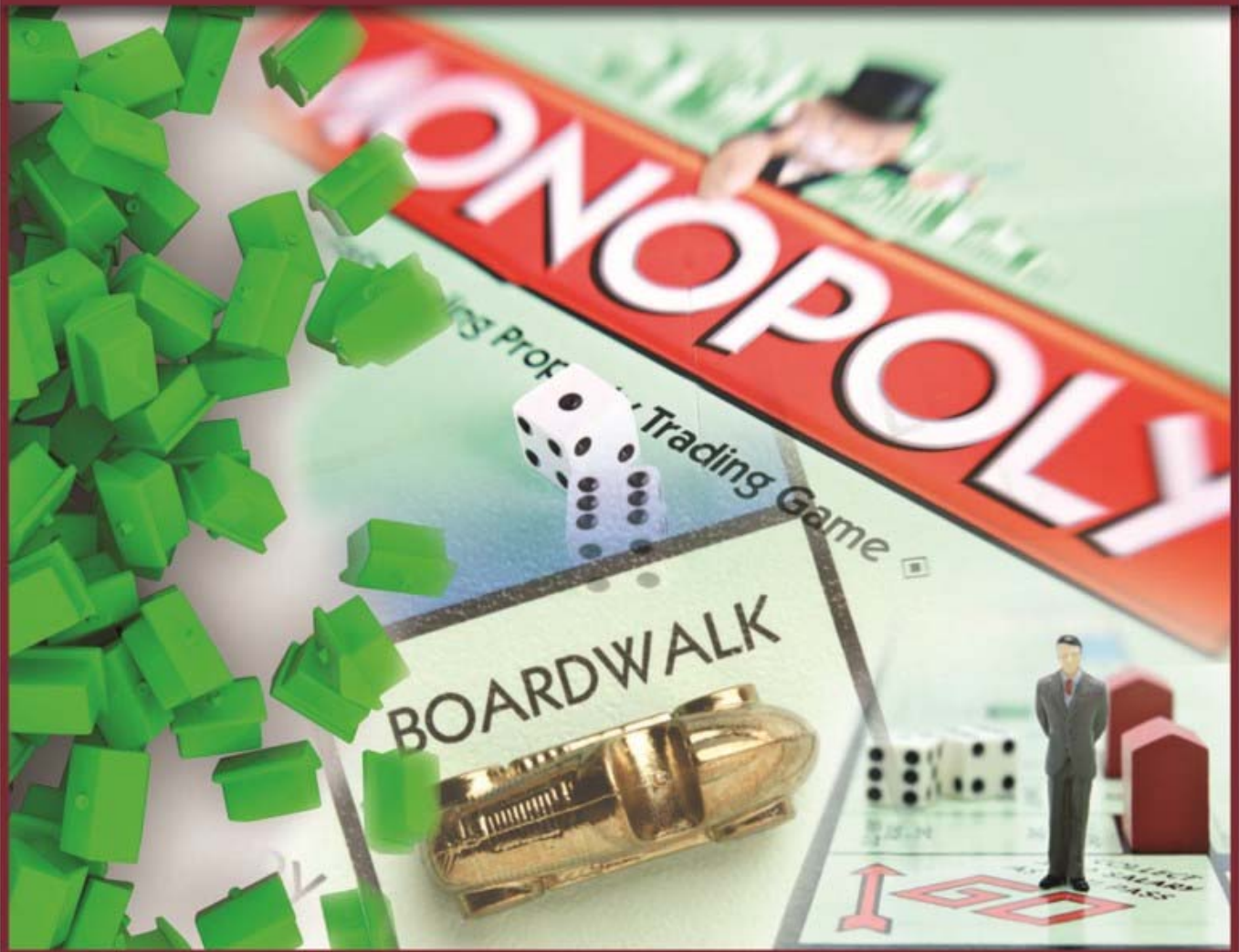


Dulles Area
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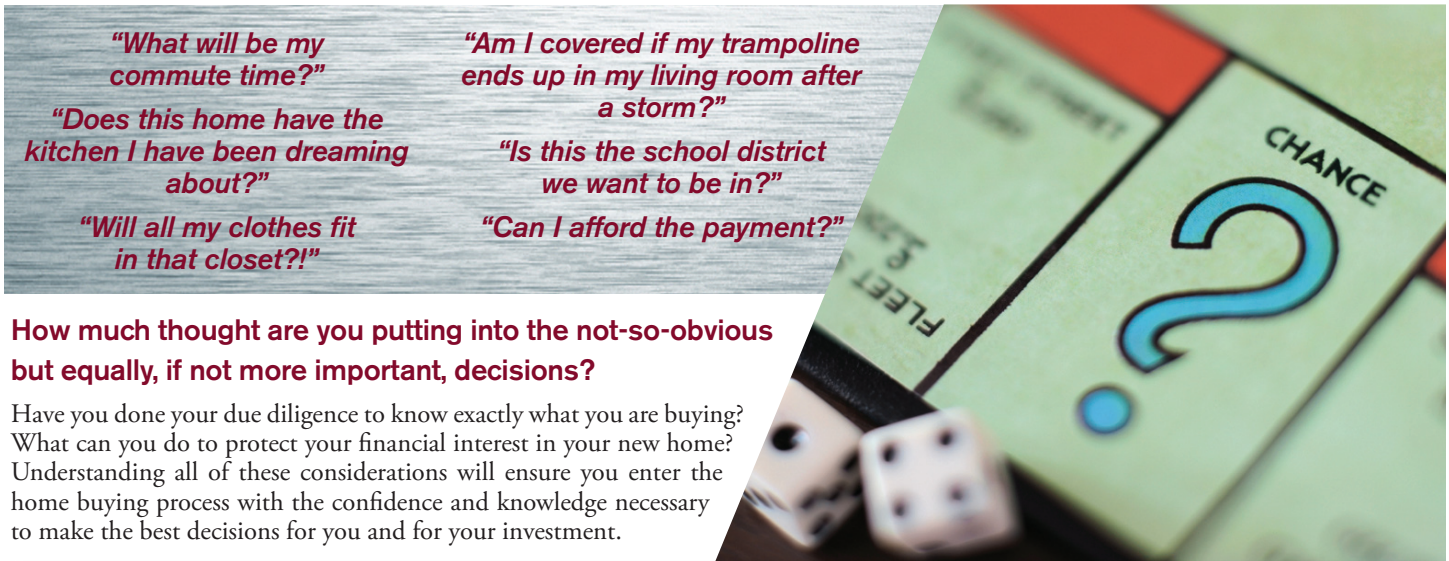
The Association of Choice for Real Estate Professionals™

HomePurchase411.com

A GUIDE TO THE NOT-SO-OBVIOUS DECISIONS IN HOME BUYING



Purchasing a home is likely the largest, most important investment you will ever make. Along the way, you will undoubtedly need to make several important decisions...



How much thought are you putting into the not-so-obvious but equally, if not more important, decisions?

Have you done your due diligence to know exactly what you are buying? What can you do to protect your financial interest in your new home? Understanding all of these considerations will ensure you enter the home buying process with the confidence and knowledge necessary to make the best decisions for you and for your investment.

Title Insurance: Don't lose Boardwalk!

Imagine you've saved all that money after "passing go" and finally have the opportunity to buy the property of your dreams—Boardwalk! You admire the beautiful blue property until one or two other players claim they had already purchased it. While this might be fun to argue about during a game, in real life, not so fun!

Before discussing title insurance, it is important to understand what "title" is. Title is the formal right of ownership of property. It deals with your use and enjoyment of that property and your just possession of that property. Title insurance is an insurance policy that insures and protects an owner's or lender's interest in real property. It protects against loss due to title defects such as liens and encumbrances on title, fraud, forgery, missing heirs, documentation errors, or filing and recording errors down at the county clerk's office. Even a thorough title search won't uncover some of these issues.

Title insurance is unique. Unlike other forms of insurance like life, health or auto insurance which all protect against a future unknown event or risk, title insurance is retrospective. It looks back in time and provides coverage from the effective date back in time, forever.

There are two types of title insurance: An Owner's Title Policy and a Lender's Title Policy. Both policies are a one-time premium. A Lender's



Policy is required in order to protect the lender's legal interest in the property. The policy premium is based on the dollar amount of the loan. No lender will make a loan without this protection. This policy is good until the loan is paid off. The lender's policy does not offer protection to the purchaser.

The Owner's Policy offers protection to the new home buyer. It is an optional policy, but given the size and scope of home purchase transactions and the fact that it is a one-time fee, the vast majority of home buyers choose to purchase an owner's policy. The owner's policy is good as long as the owner has an interest in the property. The standard Northern Virginia purchase contract requires the seller to give the buyer a General Warranty Deed. This deed states that the seller is legally promising good and marketable title to the property—FOREVER. Thus, a homeowner who sells property will always be in the potential chain of liability and an owner's title insurance policy will protect them.

The owner's policy is issued in the amount of the purchase price because that represents the owner's interest in the property. There are two types of policies offered to a home buyer; a standard policy and an enhanced policy. Under the enhanced policy the purchaser receives additional protection such as an inflation feature, where the coverage amount will inflate up to 150% of the original purchase price and affirmative mechanic's lien coverage. Generally, the enhanced policy is about 20% more expensive than the standard policy.

Protecting one's interest in what is likely the largest asset they own should be a clear priority. Title insurance achieves this important goal.

Caveat Emptor: Beware of what?

It may sound like a spell cast by Harry Potter as he waves his magic wand, but don't be complacent about the seriousness of this incantation! Caveat Emptor means, "Buyer, beware!" A home buyer must do their due diligence prior to purchasing a home because the law in Virginia places a substantial burden on home buyers to protect themselves. The law requires sellers to provide a Residential Property Disclosure Statement. However, the title of this document is misleading because sellers don't make any representations as to the condition of their

property. Buyers are well-advised to exercise whatever due diligence is necessary in investigating issues like property condition, matters relating to adjacent parcels, historic district ordinances, resource protection areas, etc.

It is important to consult with a real estate expert and local authorities regarding these matters prior to closing on a home, or in some cases, prior to submitting a contract. Ask questions and do your homework. Be aware of things that may affect your right of use or enjoyment of your property. Caveat Emptor is alive and well in Virginia and once you close on a home, you may have no recourse for discovered problems after closing.

Survey: Did you do your homework?

Most people spend considerable time researching and educating themselves prior to making major purchases of items like computers, smart phones and automobiles.

Would you buy a home or piece of land without doing the same or more due diligence? You'd be surprised how many people skip this important step!

Real estate purchases can be tedious and costly. The fees can seem daunting at times. A survey is not mandatory and a number of home buyers decline to get a survey simply to save a few hundred dollars. *Don't do it!*

Imagine visiting a home for sale and as you walk out the back door you see a fenced in yard. Naturally, you assume everything inside the fence would be your property. An offer is made by you on the property and a survey is ordered showing that the fence in the back actually encroaches on an adjacent property. By ordering a survey, a home buyer can be informed and work through such issues prior to closing on the home. A residential property survey is a physical depiction of the property that will show the boundaries and the home's placement within those boundaries. It will show important physical features such as driveways, sheds, fences, pools, and decks, out buildings and any encroachments. It will also identify easements and rights of way of record.

Another very important thing to note that many people don't understand is that surveys and title insurance are related. As with all insurance policies, title insurance policies contain certain exceptions. One such exception is for matters of survey. In simple terms, this means that if a home buyer does not get a survey and a survey related title issue arises-you are on your own. The Owner's Title Insurance policy will not cover you if an issue comes up that would have been discovered by a survey. Said another way, if you are not going to protect yourself and do due diligence, the insurance company isn't going to protect you either. On the other hand, the survey exception will be deleted from the Owner's Title policy if an accurate survey is obtained. Failure to get a survey prior to closing can have serious ramifications for a home buyer.

Do your homework. Get a survey.

You're ready to close, how do you plan to take title to your new property?

Congratulations! You've made some great choices and are ready to go to settlement. But wait, your work is not done. How will you take title (ownership) to your new property?

How you decide to hold title is important because the form of ownership you choose can have significant consequences relating to survivorship, inheritance, exposure to creditor's claims and ownership interest.



Unfortunately, the vast majority of buyers do not give this very important topic any thought until they are at the settlement table. It is important to consult an attorney or call your settlement company to get a clear understanding of your choices and determine the most advantageous form of ownership for your particular situation.

Outlined below are forms of tenancy from which to choose. These are general descriptions and are not intended to be legal advice.

Sole Ownership:

You alone hold all rights to the property. You are the sole owner with 100% interest.

Joint Tenancy with right of survivorship:

An equal, undivided ownership interest is held by all parties named on the deed. In the case of the death of one owner, the surviving owner(s) will own the property in equal shares. The decedent's interest in the property passes to the surviving owners and does not pass to the decedent's heirs. This is commonly used for non-spousal family members, engaged couples and same sex partners.

Tenancy by the Entirety:

This form of tenancy is exclusively for married couples. Husband and wife hold title together. When one spouse dies, the other gets full title to the property. This tenancy can also protect the individuals from the liens of the other's creditors. When severed by divorce, this tenancy will convert to tenants in common.

Tenancy in Common:

When two or more owners take title, they may choose to take title as tenants in common. This form of tenancy is commonly used when a relationship is more business than personal. A good example would be two real estate investors working together. Each tenant in common owns a proportionate undivided interest in the property. It does not have to be in equal shares. The percentage interest is specified in the deed. Each tenant in common can sell, give or will their interest in the property at any time. This is the default form of tenancy in Virginia if two parties hold title to a property and no interest or tenancy is explicitly stated.

Home Inspections: Are you willing to take a chance?

Home inspections are one of the most important due diligence steps a home buyer can take. In light of the fact that Virginia is a caveat emptor state (discussed above) and the standard Northern Virginia contract essentially defaults to an "as-is" contract after the home inspection contingency is satisfied, the importance of a home inspection cannot be overstated. It is the home buyer's best opportunity to satisfy themselves that the property is of the quality and type acceptable to the home buyer. Retaining a thorough, trustworthy home inspector is extremely important.

TIMED COURSE OUTLINE

2-Hours

Introduction: (5 Minutes)

A home purchase is usually the largest, most important transaction most people will undertake. Understandably, prospective homebuyers consider many important factors in selecting a home. Some examples include:

- What will my commute to work be like?
- What can we do with the basement?
- Will the master bedroom closet fit all my clothes?
- Is there a cul de sac for the kids to play?
- Will I be able to afford the loan payment?

These are all important considerations, however, there are some not so obvious ones that all homebuyers should carefully consider in order to minimize the risks in what should be a happy, positive event for homebuyers.

I. Title Insurance (20 Minutes)

A. Title is the formal right of ownership of property. Thus, Title Insurance protects and insures an owner's or lender's interest in real property. Specifically, it is a policy of indemnification against loss caused by any covered defect in the title.

B. Policies: The Owner's Policy and the Lender's Policy

1. Owner's Policy:

Protects the homebuyer

One time premium based on purchase price

Valid for the rest of the homebuyer's life

Optional

Two Types: Standard v. Enhanced

2. Lender's Policy:

Protects the lender

One time premium based on loan amount

Valid until the loan is paid off

Required

C. Unique: Title insurance is retrospective, in that it looks back in time, whereas most insurance policies protect future unknown events.

II. Caveat Emptor: Buyer Beware! (20 minutes)

Homebuyers must do their due diligence before purchasing a home. A homebuyer has a substantial burden to satisfy him/herself that a property is of the type and condition satisfactory to them.

A. Residential Property Disclosure Statement: While Virginia law requires a seller to provide a buyer this statement (unless the transaction is exempt), the title to this is misleading. In reality, it is a disclaimer statement, not a disclosure. A seller makes no representations to the buyer as to the condition of the property, adjacent parcels, covenants and restrictions, etc.

B. Generally, a seller will only have liability in the event actions were taken to conceal a condition or some other fraudulent activities were undertaken.

C. Having a professional, thorough home inspection is extremely important.

III. Surveys (20 Minutes)

A. A survey is a physical depiction of the property including, boundary lines and other characteristics such as patios, sheds, decks, driveways, fences, set back lines and possibly easements.

- B. This is an important due diligence step because what a prospective homebuyer sees and interprets as the property may not be the case.
 - 1. For example: A homebuyer walks out to the backyard of a property and sees a fence. The homebuyer presumes that everything inside the fence is the subject property and everything outside the fence is not. However, a survey may reveal that in fact the fence was built on the neighbor's property and therefore, certain property inside the fence was not actually THE property.
- C. Surveys and Title Insurance: Lenders receive survey coverage in their final title policies whether the buyer gets a survey or not. However, buyers do not. Therefore, in order for a buyer to not have a general survey exception in their final policy, they must get a current survey.

IV. Taking Title (20 Minutes)

- A. Where two or more people take title to property, a tenancy will have to be selected. There are three from which to choose.
 - 1. Tenancy by the Entirety: This is reserved for married couples only. Where stated, this includes rights of survivorship. It also includes basic asset protection to the extent the creditors of only one spouse cannot lien the property under this tenancy.
 - 2. Joint Tenants: With this tenancy, each tenant holds equal, undivided shares of the property. Additionally, where stated, it includes rights of survivorship.
 - 3. Tenants in Common: Each tenant holds a proportionate undivided interest in the property. It does not have to be equal shares. This is the default tenancy in Virginia.

V. Home Inspections (20 Minutes)

Given the common law of caveat emptor and most buyers inability to understand the physical condition of a home, a home inspection is one of the more important steps to be taken in a home purchase.

- A. The standard Virginia Residential Sales Contract also dictates emphasis on home inspection.
 - 1. While the relevant provision gives the buyer a choice about doing a home inspection, the buyer's only real recourse relating to physical condition issues is a home inspection and the seller's promise to convey the property in substantially the same condition as it was on some prior agreed upon date.

VI. Conclusion: (5 Minutes)

While homebuyers have a lot to worry about, these five areas are not normally at the forefront of the homebuyer's mind. Giving these areas more thought and consideration will reduce potential headaches later.

Class will include 10 minutes of break time = 120 Minutes Total.

Questions?

Need more information?

Call Vesta Settlements: 703-288-3333

or visit our website for educational videos
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