HIGHLAND
TITLE + ESCROW

A HOMEBUYER'S GUIDE

A Guide to the Considerations in Home Buying and the Road to Closing

Highland Title + Escrow

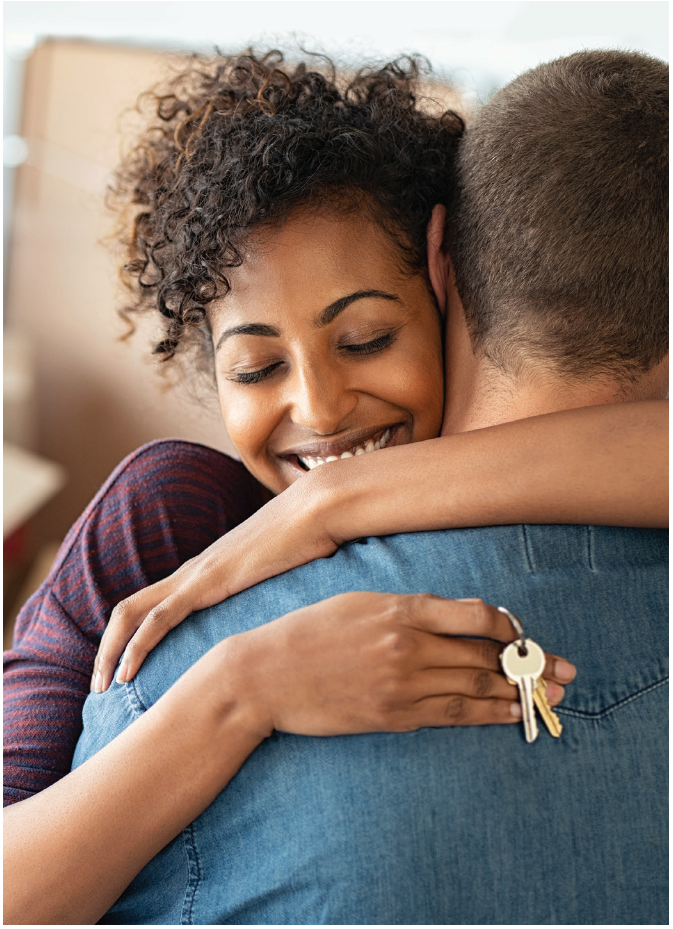
TABLE OF CONTENTS

Who We Are

Highland Title + Escrow was founded in 1999 by Mike McFarlane, one of the most knowledgeable, respected and honest attorneys in the District/Maryland/Virginia area. In addition to being the region's preeminent expert in real estate law, Mike has a talent for surrounding himself with amazing people who care about each client's settlement experience. Many staff are longtime employees of Highland Title with several who started with Mike on day one!

Highland Title + Escrow has grown exponentially over the years. In addition to expanding our office and settlement locations to provide ultimate convenience to our clients, we've also grown technologically to provide our clients and the agents who service them with industry-leading and user-friendly tools. Even with Highland's growth, its team of experienced and seasoned professionals are able to maintain the high-touch feel of the company that Mike first created more than two decades ago.

Our goal is to ensure a positive settlement experience for all parties. Our clients are not just file numbers to us...we have the tools and experience to accommodate our clients' needs and exceed their expectations better than anyone else.



OFFICE LOCATIONS

VIRGINIA SETTLEMENT LOCATIONS

Arlington • 3033 Wilson Boulevard, Suite 700
Arlington, VA 22201

Ashburn • 44095 Pipeline Plaza, Suite 100
Ashburn, VA 20147

Fairfax • 11350 Random Hills Road, Suite 800
Fairfax, VA 22030

Fredericksburg • 10601 Courthouse Road, Suite 200
Fredericksburg, VA 22407

Herndon • 783 Station Street, Suite A
Herndon, VA 20170

Manassas • 9401 East Street
Manassas, VA 20110

McLean • 6723 Whittier Avenue, Suite One
McLean, VA 22101

Stafford • 80 Prosperity Lane
Stafford, VA 22556

MARYLAND SETTLEMENT LOCATIONS

Frederick • 8 East 2nd Street, Suite 104
Frederick, MD 21701

N. Bethesda • 6116 Executive Blvd, Suite 300
N. Bethesda, MD 20852

The Home Buying Process

1. Getting Prequalified with a Lender

Before you begin searching for the perfect home, you will want to get pre-qualified. This involves providing the lender with basic financial information in order to issue you a letter stating how much you can reasonably afford. Your pre-qualification letter is helpful when submitting offers on homes. Sellers want to know that you will be able to obtain financing, and the pre-qualification letter is a good indication.

Once you have a ratified contract, you will work with a lender (either the same lender who issued you the pre-qualification letter, or a different one depending on your preference) to obtain financing. This involves providing the lender with a more comprehensive picture of your finances, including tax returns, credit information, pay stubs and proof of funds. At this time, you will also be able to lock in an interest rate with the lender on your mortgage loan.

It typically takes about 30-45 days to be approved for a loan. This timeline will be incorporated into the contract. Once approved, the lender will communicate to the settlement company that you are cleared to close, and the loan will appear as a credit on your settlement statement.

Need a recommendation for a trusted lender? Ask your REALTOR® or Highland Title + Escrow.

2. Choosing a Real Estate Agent

After deciding to purchase a home, your first task is to choose a real estate agent. Your agent will guide you through the home buying process, from showing you homes that meet your budget, lifestyle, and taste, to writing an offer in the form of a real estate contract.

3. Ratifying Your Offer

If the seller accepts the offer you presented, you have a ratified contract. However, the seller may counter your offer by changing some terms such as the price, seller-paid concessions, settlement date, etc. You may either accept these terms, reject, or counter them. These exchanges will continue until the contract is acceptable to both parties at which time you will have a ratified contract.

4. The Contract: Terminology

The terms of settlement are governed by the real estate contract—a legal document signed by the buyer and seller outlining the details of the transaction. Your Realtor will prepare the contract for you and uses a form that is customary in the area.

Purchase Price and Loan Amount. The purchase price is negotiated prior to ratification of the contract and may only be adjusted later by amending the contract. The loan amount is the amount, if any, that the buyer will borrow from a lender to finance the transaction. The down payment is the difference between the purchase price and the loan amount. You will have to pay the down payment and closing costs at settlement.

Closing Cost Credits. These are credits from the seller to the buyer to be applied toward the buyer's closing costs at settlement. These credits may be adjusted over the course of the transaction by amendment to the contract, for instance, if the home inspection reveals that repairs to the property are necessary and the seller agrees to give a credit to the buyer in lieu of making the repairs. Closing cost credits must not exceed the actual closing costs.

Condition of the Property. Property in Virginia is sold "as is where is," which means the property is sold in its current condition, whatever that condition happens to be. While the seller cannot intentionally conceal any defects, they are not required to disclose any problems with the condition of the property (with few exceptions). In addition, the seller must provide a Residential Property Disclosure Statement to the purchaser, which discloses to the purchaser that the seller is not responsible for disclosing or representing the condition of the house. As such, buyers are advised to investigate issues like property condition, matters relating to adjacent parcels, historic district/zoning ordinances, etc...

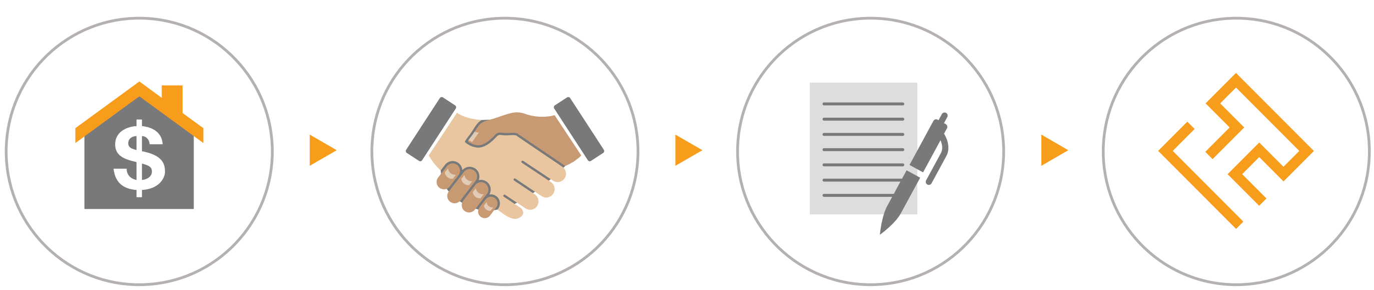
The best way for a buyer to discover any potential defects in the house is by having inspections performed on the property.

Home Inspection(s). Buyers are encouraged to obtain a home inspection by a trusted, professional home inspector (whether or not there is a home inspection contingency in the contract). Your real estate agent should be able to recommend a trusted inspector. If the property has any special features or structural issues, you may need to consult an inspector who specializes in that feature.

Termite Inspection. A termite inspection is typically required by a lender. The inspection is relatively inexpensive and reveals the presence or damage caused by wood destroying insects. Remediation, if needed, can cost several hundreds of dollars, and is typically paid for by the seller. ▶

THE HOME BUYING PROCESS • AT A GLANCE

GET PREQUALIFIED WITH A LENDER ▶ CHOOSE A REAL ESTATE AGENT ▶ SUBMIT AN OFFER ON A HOME ▶ CALL HIGHLAND TITLE + ESCROW



Status of Title. Another protection in the contract is a clause that states that title must be good, marketable and insurable. This generally means that the property will be conveyed free of known liens and encumbrances, or no serious defects, and exposes no hazard of future litigation. This provision will provide that you have a right to purchase title insurance.

Time of the Essence. This provision states that if the settlement doesn't occur according to the contract, the party who failed to meet stated dates or time frames will result in waiver of contractual rights or will be in default under the terms of the contract.

Default Provisions. If a buyer or seller fails to uphold one of the material terms and conditions of the contract, they may be in default of the contract absent a legal excuse.

Buyer Remedies. If the seller fails to perform the terms and conditions of the contract or fails to complete settlement, the buyer may pursue damages and/or specific performance—an equitable remedy in which the court orders the seller to sell the property.

Seller Remedies. If a buyer fails to perform the terms and conditions of the contract or fails to complete settlement, the seller may choose to accept the buyer's earnest money deposit (EMD) as liquidated damages, or pursue further damages in court.

Attorney's Fees. If a dispute arises between seller or buyer and a lawsuit is filed, the prevailing party may be entitled to the reimbursement of reasonable attorney's fees and court costs from the other party in the litigation.

5. Scheduling Your Settlement

Once you have a ratified contract, have your REALTOR® call Highland Title + Escrow to facilitate your settlement from contract to close.

CONTRACT CONTINGENCIES

Prior to signing the contract, you have the option to place contingencies in the contract that allow you to cancel the contract if certain expectations aren't met. It is important that you read these contingencies carefully. Three common contingencies include the home inspection contingency, the financing contingency, and the appraisal contingency.

The **home inspection contingency** allows you to withdraw from the contract if the home inspection reveals that certain aspects of the home need to be repaired or replaced. A licensed inspector will perform a home inspection, revealing any defects or potential hazards in the property. Upon reviewing the home inspection report, you will have the option to withdraw from the contract, ask the seller for additional credit toward closing costs, or ask the seller to make repairs.

The **financing contingency** allows you to cancel the contract if, after applying for a loan, you are unable to obtain financing within a specified number of days after contract ratification. If the financing contingency period expires, however, you may have to proceed with the contract or be deemed in default.

The **appraisal contingency** states that if the property does not appraise at or above the sales price, the parties can agree to lower the price to match the appraisal, or you can opt to withdraw from the contract. These contingencies serve to protect the buyer and give them an out for unpredictable aspects that may arise when purchasing a home.

Our Three Major Roles

Once we receive your ratified contract, the settlement agent handles the transaction from contract to close. The settlement agent's responsibility is to carry out the transaction between the buyer and the seller, and the borrower and the lender, as laid out in the contract. As a settlement agent, we see that the seller is paid for the property they are selling, the buyer receives title to the property, and the lender receives security for the money it lent to the borrower to purchase or refinance the property. In doing so, our role is three-fold:

Conducting Your Settlement

We arrange a time for all parties to the transaction to sign documents at settlement. We oversee the preparation of all paperwork for our clients to approve and sign, and one of our experienced settlement agents explains each document at settlement. Our goal is to have the client leave settlement with a clear understanding of what they have signed. After settlement, we record the deed and mortgage with the county, and disburse funds as designated on the settlement statement.

Providing a Clear Title for the Property Being Purchased

As soon as we receive a ratified contract, we order a title search on the property which informs us of any liens or encumbrances on title. One of our experienced attorneys or title underwriters reviews the title report and works diligently to clear all known title issues to ensure a smooth and timely settlement. We also make sure you can purchase title insurance that will protect you against any unknown title issues or future problems.

Safekeeping Funds in Escrow

Concurrent with reviewing title, our processors gather all financial data related to settlement. This includes the seller's mortgage information, taxes, homeowners association dues, commission information, and financing fees. We prepare a settlement statement detailing the sellers' and buyers' credits, debits, fees, and charges. We also hold all money in an escrow account until settlement, and disburse all funds pursuant to the settlement statement and in accordance with the contract and applicable law.

OUR THREE MAJOR ROLES

1. CONDUCTING SETTLEMENT

2. PROVIDING CLEAR TITLE

3. SAFEKEEPING OF FUNDS

The Settlement Process: An Overview

What Is Settlement?

Settlement is the final stage in the home buying transaction, when home ownership legally transfers from the seller to the buyer. The settlement process begins when we receive a ratified contract from your real estate agent. Then our job begins with the following:

- Order and review a title search on the property, and work to cure any title defects revealed
- Order a survey, if requested, and review for any boundary line issues and encroachments
- Prepare the title commitment
- Contact the seller's lender to obtain a payoff amount for any existing mortgages or liens
- Contact the local taxing authority to verify the amount of property taxes and determine proration between buyer and seller
- Contact the homeowners association(s), if any, to determine the amount of dues and determine the prorations between buyer and seller
- Coordinate the deed preparation
- Obtain the lender's loan documents and receive the loan proceeds
- Collaborate with your lender to make sure all charges and credits are correct, and assist lender with balancing its Closing Disclosure
- Prepare all necessary settlement documents

What Happens at Settlement?

When all of the items above have been completed, settlement will occur on the date stated in the real estate contract. On the day of settlement, alternatively called "closing," a settlement attorney or licensed title insurance agent reviews each settlement document with the buyer(s) and seller(s). Settlement will typically occur in the settlement company's office.

Though buyers and sellers can both be present at settlement, nowadays most buyers and sellers attend settlement separately. For a buyer, settlement typically takes 30-60 minutes. Settlement documents include a variety of loan/lender documents in addition to documents prepared by the settlement company.

When both parties have signed the settlement documents, and all funds have been received from the buyer and lender, possession of the property transfers from the seller(s) to the buyer(s).

Settlement is complete when both parties have signed all documents, the deed has been recorded with the county, and funds have been disbursed.

The buyer and seller's real estate agents may choose to attend settlement, but since they are not parties to the transaction, their presence is not required at settlement.

Who Are the Parties Involved?

- The buyer and seller's real estate agents work under the supervision of their respective brokers. The brokers, in addition, to guiding the agent, hold liability for the agents' actions.
- The lender is the financial institution issuing financing for the property. Sometimes the lender is also affiliated with a mortgage broker, a regulated and licensed professional who acts as a bridge between borrowers and the lender.
- The loan officer, who works on behalf of the lender, guides the buyer through the lending process, and coordinates with the settlement company to assure that the buyer is approved for funding and the correct funds are distributed at settlement.

- The settlement agent is a fiduciary for the buyer and seller. The settlement agent can not legally represent either party nor provide legal advice or counsel to either party. Settlement agents are governed by the Real Estate Settlement Procedures Act of 1974 (RESPA), which requires them to provide borrowers with certain timely disclosures regarding the nature and costs of the real estate settlement process.

What Documents Are Involved?

Settlement Statement

The Settlement Statement is an itemized statement of the buyers' and sellers' credits and debits. Items will include (but are not limited to) the sale price of the property, loan amount, taxes, homeowners association dues, closing credits, real estate commissions, and title and settlement fees. Certain fees on the settlement statement are prorated as of the date of settlement. These fees include homeowners association dues, and taxes. The Settlement Statement is provided to the real estate agents prior to settlement, and is reviewed by all parties to the transaction with the settlement agent/attorney at settlement.

The Deed

Arguably the most important document that the seller signs at settlement is the deed. Though the seller signs the deed conveying the property to the purchaser, the type of deed and way in which the buyer(s) take tenancy affect the buyer. Different types of deeds provide different levels of protection to the purchaser.

In addition to the type of deed, it is important for the buyers to decide how they are taking tenancy to the property. There are four main types of tenancy, which is how a person takes title to a property either individually or with another person(s):

1. Tenants by the entirety (legally married) with common law right of survivorship
2. Joint tenants with common law right of survivorship
3. Tenants in common
4. Individually

The buyer(s) need to understand these definitions and make an informed decision at settlement.

Loan/Lender Documents

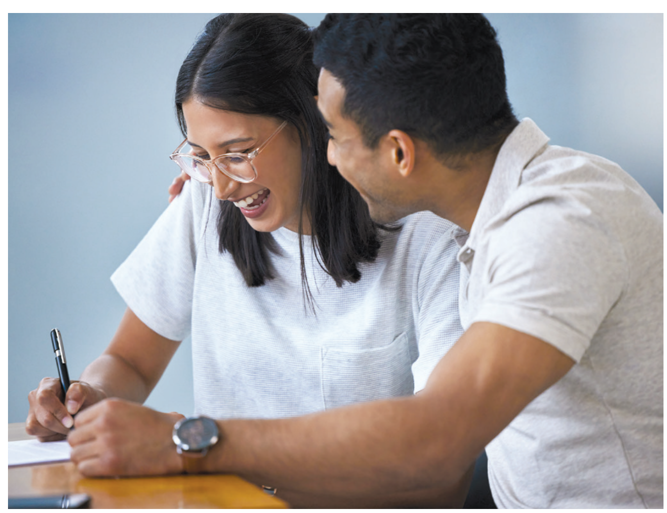
If you are using a lender to finance the purchase of your home, you will have a number of loan documents to sign at settlement. The documents protect the lender's interest in the property. Among the most important documents are the Promissory Note and the Deed of Trust. The Promissory Note contains your written promise to repay the lender the loan amount within a certain period of time, at a certain interest rate. The Deed of Trust is an agreement between you and the lender, in which, you agree to repay the loan and not damage or compromise the lender's security interest in the property. Until the loan is repaid, the Deed of Trust names a third party as trustee, and provides the trustee with the power to sell the property if you default on the loan.

Survey

A survey may be the only way to tell if a third party holds a claim to part of your property because their improvements such as a garage, fence, or swimming pool, are on your land. It may seem impossible, but sometimes a house is built on the wrong lot. A survey provides peace of mind by showing the exact location of the house you are buying.

You will have the option to purchase a survey at settlement. Obtaining a survey at settlement is not mandatory, and it may be tempting for buyers to decline one to save several hundred dollars at settlement. However, a survey is recommended so a buyer can work through any boundary line or encroachment issues prior to closing on the home.

Surveys range in cost and complexity. If you decide on purchasing a survey in the settlement process, Highland Title + Escrow will reach out to one of their reliable surveyors to obtain a quote for you, and then we will order the survey if so directed.



Title

Title refers to the legal rights to one's property. Unfortunately, when purchasing a home, the purchaser can never be 100% sure that they are acquiring all legal rights to their home. Title to property consists of a bundle of rights, and it is possible that another party owns a legal or equitable right. Here are some examples:

- **Adverse Possession.** A neighbor has been mowing part of the purchaser's property for 20 years, and thus has an equitable right to a portion of the property via adverse possession
- **Improperly Executed Documents.** A deed to the property several owners ago was only signed by one of the two owners of record at the time, bringing into question the validity of the sale
- **Third Party Claims in Title.** The seller was selling as part of an estate, and an unknown heir never received his or her share of the property. After it was sold, the unknown heir asserted rights to his or her share.

These are just a few examples of the many legal or equitable rights to property that someone other than the deed holder may assert. In the settlement world, we call them "title defects."

Assuring a Marketable and Insurable Title

Most real estate contracts require that title be marketable and insurable. This generally means that the property is free from liens or encumbrances, discloses no serious defects, and exposes no hazard of future litigation for the buyer(s). In this respect, one of the settlement company's roles is to resolve, or "cure" any known title defects prior to settlement. The settlement company becomes aware of such title issues through a title search.

Upon receiving the ratified real estate contract, a title examiner searches the land records as far back as 60 years.

If title issues or defects are discovered in the search, Highland Title + Escrow works to resolve the issues prior to settlement. There is no way to assure the purchaser that title defects will not present themselves *after* settlement. The only way to protect the purchaser against the rise of title defects and the hazard of future litigation after settlement is to purchase title insurance. Unlike other types of insurance that protect against future harms, title insurance protects against financial loss arising from defects that have occurred in the past but are unknown to the policyholder at the time of settlement.

Owner's Title Insurance

Title insurance is optional and is a one-time fee at settlement. It protects the policyholder (buyer) and the policyholder's beneficiaries for life. There are two types of insurance offered: "standard" or "enhanced." The enhanced policy covers over an additional 20 risks than the standard policy. The enhanced policy also increases the value of the policy up to 150% of the value of the policy due to increase in value of the home. For instance, if the owner purchases a home for $500,000.00 and in 10 years, the home is worth $750,000.00, the amount of the enhanced policy will automatically increase to the latter amount.

Lender's Title Insurance

The lender will require the borrower to purchase a lender's title insurance policy. Completely separate from the owner's policy, the lender's policy only protects the lender in the event that the property is foreclosed upon. In addition, the policy amount is equal to that of the lender's security amount—as the mortgage is paid off, the amount of the policy decreases. When the mortgage is paid in full, the lender's policy is null.

Mechanics' Lien Coverage

Mechanics' liens arise when an owner fails to pay debts to a contractor or construction company for materials or work performed. These liens must be resolved before ownership of the property can be transferred. Mechanics' liens may become an issue for the buyer because they can be filed up to 90 days after the supplies have been bought and work completed. So, if a seller has work performed before closing (for instance, remodeling or refinishing a home to obtain a higher purchase price for the property) and fails to pay the contractor, a Mechanics' Lien may be filed after closing and therefore become the responsibility of the purchaser.

Escrow

What Is an Escrow Agent?

In addition to conducting settlements, title clearing, and issuing title insurance, the settlement agent serves as an escrow agent. The escrow agent is a neutral third party who handles all funds incident to settlement. The escrow agent accepts funds from the purchaser, lender, and any other parties to the transaction exchanging funds, and places such funds in an escrow account until settlement. After settlement, when documents have been signed and notarized, and the deed and mortgage have been recorded with the county, the escrow agent disburses the funds according to the settlement statement.

An escrow agent has no vested interest in the funds held during a transaction, and is charged with disbursing funds to only those parties entitled to receive the funds. In this respect, the escrow agent owes a fiduciary duty to and protects all parties to the transaction: the buyer, seller, lender, and title insurance underwriter.

If there is a conflict between parties regarding disbursement of the funds, the escrow agent may file an interpleader action with the court and disburse the funds to the court, who will determine which party is entitled to receive the funds.

Preventing Wire Fraud

Within its duty to safeguard funds, the escrow agent also has a duty to prevent wire fraud. Though wire fraud has always been present in the industry, settlement companies used to be able to detect it much more easily. These days, the perpetrators are highly sophisticated—their knowledge of the settlement process rises to such a level that it is easy to fool even those seasoned buyers, sellers, and title professionals.

Always follow these best practices to prevent becoming a victim of wire fraud:

1. **Call.** Before wiring any funds, call your title company and verify the figures on the wiring instructions.
2. **Check.** Always check email addresses for irregularities. Recall that most wire fraud stems from a person creating an email address that looks similar to one that a buyer is familiar with. When replying to emails, use "forward" instead of "reply." Typing in an email address you trust makes you less susceptible to accidentally replying to a spoofed email.
3. **Beware.** Be suspicious of any changes to wiring instructions.
4. **Secure.** Secure your devices that you are using to communicate with your real estate agent, lender and title company.
5. **Change passwords regularly.** Use secure networks when possible. You will be more susceptible to fraud when using Starbucks' internet than, say, the secure Wi-Fi at your personal residence.
6. **Consider using cashier's checks** instead of wiring funds.

HIGHLAND
TITLE + ESCROW

Main Office | **703.723.3300**
info@highlandtitle.com | orders@highlandtitle.com