



A National Association of Exclusive Buyer's Agents Home Buyer Report

Under-Reported Home Buying Issues:
How home buyers can overcome
the latest buying challenges



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Summary

When you're shopping for a new home, you face many challenges. Picking a location, deciding how much you can afford, and securing the right financing are some of the most commonly discussed issues that you must solve. However, you should also be aware that there are many new and challenging issues which are not as often discussed, but which can be just as important.

In the fall of 2007 the National Association of Exclusive Buyer Agents (naeba.org) conducted a survey of their broker and agent members about the most under-reported issues facing you as a home buyer. The survey covered issues from across the country and across markets, from the needs of the first-time home buyer to those of the luxury home and resort property buyer.

This report outlines the results of the survey, including real-life examples provided by agents working in the best financial interest of home buyers. Additionally, the report includes suggestions for what home buyers like you can do to overcome these challenges.

Survey Methodology

Most of the information available to consumers focuses on the seller's side of the home buying equation. The National Association of Exclusive Buyer Agents felt that a report from the buyer's perspective might be helpful for people considering a home purchase.

To gather data for the survey, NAEBA members across the country were given a list of 15 under-reported issues facing home buyers and asked to select the top five for their market.

Members were then asked to provide examples of these issues that they had personally witnessed.

Finally, information was gathered on what buyers could do to overcome these challenges and enjoy a less frustrating, and potentially more profitable, home-buying experience.

Note that some examples have had industry abbreviations spelled out and minor clarifications added. The meanings were not changed.

The Issues

According to the survey results, the top ten under-reported issues which you face today as a buyer are:

1. Fake buyer agents
2. One-stop shopping
3. Poor local news coverage
4. Buying foreclosed properties
5. Agency disclosure
6. Buyer agent "bribes"
7. Websites not providing full inventory of available property
8. Inadequate home inspections
9. Poor quality in new construction
10. Poor performance of Internet lenders

Following is a brief discussion of each issue, including real-life examples from agents working directly with home buyers. Also, you will find suggestions on how to successfully solve these issues.

Issue #1: Fake Buyer Agents

According to our survey, the biggest under-reported home buying issue facing today's buyer falls under the heading "fake buyer agents." These are real estate agents who claim to be buyer agents and offer to work in your best interests, but then fall far short of the obligations inherent in the label buyer agent.¹

To review, at a minimum a buyer's agent should:

1. Clearly spell out their relationship to you, what services they will provide, and how they are going to be paid. (Most buyer's agents are paid out of the seller's proceeds.)
2. Give you unbiased exposure to property, including critical evaluation of properties you are interested in. (They should not push you at one property because it is an office listing or another property because the offer of compensation is higher.)
3. Help you determine how property asking prices compare to their actual values. This would include a review of recent comparable sales, inventory levels and absorption rates for similar property. (This is absolutely critical in today's buyer's market)
4. Prepare a negotiation strategy and help you negotiate with the seller and/or the listing office.

¹ Under common law, the "buyer's agent" is actually the real estate company the buyer employs, not the individual licensee. However, real estate industry lobbyists have been successful in abrogating the common law in many states and the definition of buyer agent has been corrupted in many areas. For the balance of this report we'll use the term "buyer agent" to describe the licensee the buyer is working with.

5. Help you choose a home inspector and other experts to protect your interests and if appropriate, negotiate to have inspection issues corrected by the seller.
6. Review closing documents and represent your interests at closing.

However, what we see now in many markets is that real estate licensees are calling themselves buyer agents without actually working for your best interests. This presents a formidable challenge to you as a buyer, but it is extremely common.

Experiences reported by survey respondents include:

"Buyers read books and magazine articles that recommend buyer agents so they know what to look for, but these days everybody with a real estate license claims to be a buyer's agent. A case in point from this last summer: A buyer calls a traditional real estate office about a listing. One of the listing agent's 'buyer specialists' shows the condo and offers to show others. The buyer is shown a bunch of \$300,000 range condos but is not happy with the options. The buyer asks to see an almost complete \$500,000 condo. They look at that and the buyer decides she likes it. In all this time the buyer has never seen the state mandated agency disclosure and they didn't actually know whose side the 'buyer specialist' was on. Then the buyer decides they are interested in the \$500,000 condo and the 'fake buyer agent' writes the contract. Except, the contract has no inspection contingency, the buyer has seen no comparable condos, the buyer has seen no comparable sales data, the buyer has seen no inventory and absorption data, and the buyer has had no help in shopping for the best loan. Once the contract was accepted, the 'fake buyer agent' doesn't advocate for the buyer but in fact tells the buyer they are not being serious when they express concern about the finish quality and tells the buyer that the builder will get upset if she has an inspection. It goes on and on."

"In many instances, the greenest and most inexperienced real estate agents are employed as 'buyer agents' at traditional real estate firms whose primary focus is on sales, rather than true buyer representation."

"We had a call from a buyer that was represented by a buyer agent from one of the traditional brokerages that did the following: Buyers only had part time jobs and were full time college students. They did have a savings of \$40,000. The agent wrote a contract on a \$125,000 home purchase. After they signed the contract (with the \$40,000 used as down payment and closing costs) they realized they would not be able to make the monthly payments. When they went back to their agent to cancel the contract because there was no way they would be approved for the loan the agent told them he already had the loan approved. We suggested that they conduct an inspection and then cancel the contract (with our local contract during the inspection period buyers can cancel a contract without giving a reason). The agent kept telling the buyers that inspections could not be done on the days the inspector was available thus the inspection period expired. It was very clear that this agent was not representing his client and he was going to do everything possible to force the closing on the home. The last resort was to suggest that the buyer meet with the agent's broker and threaten legal action if the broker did not get the contract voided. Working with the broker the contract was voided."

What You Can Do

First, spend some time thinking about what agent and company to work with when you decide to buy a home. It can make a huge difference.

When you are interviewing a prospective agent to work with, there are five areas you will want to consider:

1. Property evaluation skills
2. Negotiation skills
3. Loyalty to you and your needs
4. Proof of savings
5. Mortgage shopping and mortgage negotiation ability

Here are some specific questions to ask an agent:

Property evaluation skills:

Will you just open doors for me or will you help me look critically at homes? Can you give me an example of how you've helped buyers see issues that they weren't sensitive to on their own?

Negotiation skills:

Can you tell me about your negotiation training? What kind of tactics or techniques do you recommend in a typical home purchase negotiation? What kind of negotiation style is typical in local real estate transactions?

Loyalty to you and your needs:

If I have you help me buy a home, what are the chances of you or your company turning against me or no longer representing me? (If the company lists houses and they respond "We've never had a problem with that" you may want to run the other way.)

What about if your broker or manager has a listing that I am interested in? Can you show me that policy in writing so that I can take it home and review it?

(The REALTOR code of ethics actually requires REALTORS to disclose the chances of a conflict of interest, but this requirement is not typically enforced.)

Proof of savings:

Can you show me examples of transactions where you have saved buyers money? Can you tell me specifically how you saved buyers money in each transaction? What is your average savings per transaction this year?

(Most serious buyer's agents will be more than happy to give examples and show you

actual data. This is what they live for and by expressing interest you are giving them a chance to show off.)

Mortgage shopping and mortgage negotiation ability:

Will you help me find a credible lender? Will you show me how to objectively compare rates and fees? Can you negotiate with lenders for the best pricing?

Issue #2: One-Stop Shopping

Many larger real estate brokerages have started their own financing and closing divisions to allow them to generate income not just on the brokerage fees, but also on loan fees, title fees, and even insurance fees. This "one-stop shopping" is touted as an additional convenience for the consumer, but often at a significant expense to you as a buyer.

Examples reported by NAEBA agents:

"One of the big Michigan real estate companies has their own title company that they are pressuring their buyers to use. On a recent transaction the buyer ended up paying \$679 in additional fees on a \$146,000 home. This is clearly not in the buyer's best interest, but it was pure profit for the big brokerage."

"It's in all the big box agencies, and many medium offices have some sort of an affiliate agreement that is also disclosed but not the amount the company or agent makes off the unknowing buyer."

"The problem with one-stop-shopping is that the buyer loses control on virtually everything because it's done in-house, and there are simply no checks and balances. If the process is done all in one place, there are no safeguards because they (the agent, lender, etc.) are all working for the company primarily, and want that deal to close—by hook or by crook!"

What You Can Do

If the real estate company you are working with has "Affiliated Business Agreements" with title companies, lenders, or other vendors, that means they are probably generating income through those arrangements. Ask the real estate person you are working with specifically what income they and their company are generating from that relationship. And have them put it in writing. Then, understand up front that you need to shop for your own vendors and compare value. Often large real estate brokerages generate as much income on the ancillary services as they do on the actual real estate transaction.

These arrangements also often remove the protection you get from having multiple parties reviewing the documents. Pay attention to those relationships.

Issue #3: Poor Local News Coverage

Often local news sources generate a significant portion of their income from real estate brokerage advertising revenues. Often this seems to shift the news departments away from any news that may upset their advertisers. Since real estate is a local business, this has a negative effect on the reporting of information that is often important to home buyers.

Example notes from the survey:

"A few years ago a Kansas City newspaper published an article talking about exclusive buyer agency. The President of the Regional Board of Realtors took exception to the paper promoting the buyer agency. To retaliate, the President mailed a copy of the letter which he sent to the paper's editor to all members of the association. In the letter he demanded that all future publications on buyer agency be approved by the association. His threat was based on pulling all the advertising from the paper. Since that time there have been no articles that mention exclusive buyer agency."

"Our local newspaper real estate coverage is basically an advertisement for a different local development each week, disguised as editorial content."

"A little over 10 years ago after several years of depressed real estate values, a newspaper reporter interviewed me about the changing market and why buyers should use an Exclusive Buyer's Agent. The story included interviews with one of my clients who had just bought a house. I had helped them get a lender who was willing to help resolve their poor credit issues and approve them for a loan. They were exceptionally happy with their experience and told the newspaper so. A San Francisco TV channel picked up on the story and interviewed my clients and me for a 5 minute clip. The TV crew interviewed me again a couple weeks later about the changing real estate market. One of the heavy hitter listing agents in a very large company complained to the manager of the TV station, threatening to stop all her real estate ads if they ever interviewed an Exclusive Buyer's Agent again. One of the TV reporters called to tell me that they would no longer be able to interview me, and why."

What You Can Do

When shopping for a home, be aware of the limitations of local newspapers. Be especially sensitive to advertisements disguised as editorial content. If you have the luxury of watching a newspaper over a period of time you can get a feel for the level of actual real estate news reporting. If you don't have that luxury, ask the advice of friends and co-workers who live in the area. And make doubly sure the real estate company you are working with is loyal to you.

Issue #4: Buying Foreclosed Properties

The recent downturn in the housing market means that there are more and more foreclosed properties going up for sale, especially in areas which are economically depressed. Although these properties may at first glance seem like a bargain, there

are many potential problems that you should carefully investigate. Apart from the usual considerations—did the previous owner intentionally damage the property before abandoning it, etc.—there are a number of under-reported potential issues you should be aware of.

Many of these issues stem from the fact that institutional sellers such as banks are simply not as interested in negotiating as an individual owner would be.

Here are several important issues to understand if you are going to pursue a foreclosed property:

1. It can sometimes take weeks for a bank or relocation company to respond in writing to your offer. Build time into your scheduling in preparation for longer delays in the negotiation phase.
2. Banks and relocation companies often have cumbersome contract addenda. Have a real estate attorney ready to review their addenda and give you some insight into the risks involved with their contract. Often banks and relocation companies will back down from their position, but it may not be worth your effort as a buyer.
3. Banks and relocation company addenda often put them in the position of being able to break the contract at will, without penalty, at any point right up to closing. Plan ahead for this risk.
4. In many markets, banks often contract to provide a warranty deed on a foreclosed property, and then when the closing documents arrive they will instead provide a special warranty deed (a lower quality form of conveyance).² Speak to a real estate attorney ahead of time to evaluate your additional risks and determine if it is worth moving forward.
5. Often, at closing, the seller will claim that they haven't gotten all their signatures so the actual closing may need to be delayed another 24 hours. This ends up preventing you from moving into your home on the date you had planned. The seller may unilaterally change your closing date and as a result the seller may not deliver ownership exactly as scheduled. Building extra time into your schedule will help in this situation.

Examples from the survey include:

"On a recent foreclosure my Buyers and the Bank (the seller) verbally agreed to their offer. We waited 3 weeks for them to put it into writing."

"Lender taking 2+weeks to respond to an offer. Lender not informing us they are already considering another offer. Lender going to closing without having valid deed. Lender refusing to turn on utilities for proper house inspection."

2 Forms of conveyance will vary by state.

What You Can Do

Most of these challenges can be overcome through due diligence. Always “read the fine print.” Have a real estate attorney ready to review contracts and give you insight into the risks involved. Occasionally, banks will back down when confronted with legal counsel.

Also, be sure to build extra time into your schedule. Banks and relocation companies are notorious for dragging their feet. Prepare yourself for long waits during negotiation. Don’t plan to move into the home or start renovations the day of or the day after a scheduled closing. The seller may unilaterally change it and delay an extra day. Don’t assume the transaction will close on time and don’t assume that the seller will deliver ownership exactly as scheduled.

Issue #5: Agency Disclosure

Agency disclosure is when real estate agents and brokers tell you clearly who they are working for. Unfortunately many agents and brokers do not provide this information in a timely manner. (Even though it is typically required by state law.)

Examples from the survey:

“Often, agency disclosures are never given to buyers or they are given after the buyer has decided on a home—at that point it’s easy for the agent to decide whose side they will be on. Because disclosures aren’t given or aren’t explained, many buyers assume the seller’s agent is their own agent and they tell that agent things that may weaken their negotiating position.”

“The National Association of REALTORS should be ashamed of its poor performance on agency disclosure. Of the buyers I speak to less than half have had agency disclosed to them when they have met other REALTORS. The fact is NAR doesn’t care that much about agency disclosure because lack of disclosure and lack of informed consent actually helps the larger brokerages.”

“Texas law requires an agency disclosure upon first meeting with any agent/broker. I have been ‘interviewed’ by many buyers who had not heard of or received that information from another agent.”

“Almost 100% of the buyers who make an appointment with us have not received the disclosure form or had it explained to them if it was available.”

“Even though agency disclosure laws took place here almost 20 years ago, our real estate commission continues to overlook those licensees who fail to provide this disclosure to the consumers. The compliance in our state is a joke. It just does not seem to be a priority for our real estate commission.”

What You Can Do

As a buyer it is up to you to take responsibility to find out who the real estate agents and brokers are working for and under what conditions. Until you see a written disclosure from someone, assume they are acting as sales people and that anything you tell them can be used against you in a negotiation at some future date.

Also, be aware that some disclosure forms and agency agreement forms have built in "renege" provisions. That is, even if they say they will be on your side, often their forms will allow them to change loyalty if you end up interested in one of their office listings or if they can make additional profit off your relationship in some other way.

Issue #6: Buyer Agent "Bribes"

As the housing market becomes more and more a buyer's market these days, we are seeing dramatically more sellers and builders offering bonuses to the agent who brings you, the buyer, into the transaction. These bonuses are commonly referred to as "bribes" in the industry.

Examples from the survey:

"In this last year we've seen sellers offering all these bonuses to agents if they bring in full price offers: 1. A Mazda Miata, 2. A lease on a new Mustang, 3. \$1,000 on a home for low-income buyers, 4. An extra 2% on a \$320,000 home, 5. A 4% commission with 3% paid at contract signing, 6. A \$15,000 bonus on a \$875,000 home, 7. An 8% commission on builder spec. homes, 8. A 7% commission and builder will reimburse all relocation referral fees. That is a lot of money in 'bribes.'"

"Agencies representing sellers are offering four-day island trips, vacation home weekends, big bonuses to buyer agents, etc."

"The trade association representing Realtors (NAR) does not require disclosure of bonuses paid to 'buyer representatives.' This has the very real potential to create a conflict of interest between a so-called 'buyer representative' and their client."

"I had two clients working with another company agent to find a home. They were very specific in what they wanted in a home. When they finally gave up and called me, they told me that the other agent had continued to push them to look at a particular listing which had none of their criteria and they had no interest. She wouldn't let up. They said to me, 'We couldn't figure out why she wouldn't let it go.' I said I'd look at it to see if they were missing something. They were missing something all right—missing the knowledge that the seller was offering a \$3,000 bonus to the 'selling' agent. Who was she representing?"

What You Can Do

As a buyer hiring a real estate company to represent you, you have a right to know how your "employee" company is being paid. You also have a right to know about any "bonuses" or "bribes" or "kickbacks" in the transaction.

Go ahead and tell them that you've heard that there are sellers offering bonuses to the company who brings in a buyer. Then ask them: "What is your company's policy on disclosing bonuses paid by the seller or listing office?" You could also ask "How will I know how much you and your company will be getting paid in my transaction?"

The REALTOR code of ethics allows buyer agent bribes without disclosure. In contrast all members of the National Association of Exclusive Buyer Agents are required to disclose bonuses to you and discuss with you how they are paid. Many of our member offices will work those bonuses back into your pocket in the form of closing cost credits so there is no conflict of interest. This could add up to thousands of dollars. It pays to ask!

Issue #7: Websites Not Providing Full Inventory of Available Property

If you are like most home buyers today, you are doing your property searches on the Internet. However, many real estate company Websites are not providing the full inventory of homes. Additionally, Website inventory is often out-of-date.

Examples from the survey:

"This is an area served by 4 Multiple Listing System services (4 different boards of REALTORS). It is extremely difficult for an out-of-town buyer to see what is on the market. Only one (other than my Website) has the full inventory."

"Many times, if a buyer is surfing the Web, they give me Multiple Listing System numbers to look up, and often the property is already sold, and closed, but the info is still on line, which is just plain a dishonest way to capture a potential buyer with bait and switch technique."

What You Can Do

In this case just being aware of the problem should help you work around it. You will want to try and find a Website in your market that provides exposure to all listings, not just the listings of one or a few companies.

Issue #8: Inadequate Home Inspections

If you are buying a used home you are probably going to have your own home inspector. But there can be considerable variation in home inspection thoroughness. A new trend to be especially wary of is the "pre-inspection," in which the seller has their own inspection done ostensibly as a favor to you the buyer. But these "pre-inspections" are often inadequately done, sometimes purposefully.

Examples from the survey:

"Home inspectors who do a detailed job in favor of the buyer generally don't get asked to do any more inspections for the traditional agency. As a result, many inspectors go out of their way to downplay problems rather than providing the buyer with an unbiased and real opinion of the condition of the home."

"The seller was nice enough to have the home 'pre-inspected.' Unfortunately they used a 'quick and easy' home inspector. Imagine our surprise when we found 2 circuits with improperly-sized breakers, a live abandoned 220V line in the basement ceiling (not in a box, just with some tape around the bare wires), 12 mis-wired outlets, and a garage door that had almost no spring tension, so if the chain had broken it would have slammed down with about 200 pounds of force! These are all basic inspection issues and none of them should have been missed."

What You Can Do

There are two steps to hiring a good home inspector.

First, make sure you hire a an American Society of Home Inspectors certified home inspector. (www.ashi.org) Make sure you are not just hiring a candidate for certification, you want a full member.

Second, if you are using a real estate company who is representing you in the transaction, ask them for a referral. Ideally they will give you a referral to an ASHI member.

Also, if you are using a real estate company who is not representing you, or you are not sure who they are representing, be very careful about their recommendations for home inspectors. In any given market, the thorough inspectors will be disliked by at least some real estate people. It goes with the territory.

Issue #9: Poor Quality in New Construction

The majority of home buyers buying new construction do not have their own home inspection. When these homes come on the resale market we routinely see defects that should have been caught and corrected by the original builder. Often this stems from a misunderstanding of the role of city and county inspectors, who normally will ignore poor construction practices if they do not lead to a safety issue.

Examples from the survey:

"Buyers are instructed by the builder's on-site agents that they don't need home inspections on new construction as the city and county inspects the property. They do not point out that this does not include a true inspection. City and county are looking for safety issues only. They really don't care if your roof flashing is applied properly or you have plumbing leaks or drainage problems."

"There is so much new home construction here in Dallas-Fort Worth area that the builders are just slapping up the houses with low-quality materials and unlicensed, unskilled workers."

"Our home inspector found many problems to be corrected in a new construction house at over 900K."

What You Can Do

You should arrange for your own professional inspections when you buy a new home. Often this will need to be written into the builder's purchase contract. Make sure the contract is reviewed by a local real estate attorney and that you have the right to have an inspection.

Also, make sure that if the local municipal inspector misses building code items, the builder will still correct the defects.

Issue #10: Poor Performance of Internet Lenders

These days many home buyers are looking to the Internet for their loans. You see Web ads offering unbelievably low rates and fees and are tempted to pursue these offers. Unfortunately the old adage still holds: If it sounds too good to be true, then it usually is. It is relatively easy for an Internet-based lender to mislead you with impossibly low rates and fees that they have no intention of delivering. Even though there are laws against this, they are virtually unenforceable with Internet lenders.

Examples from the survey:

"You never can call them when you need to. They don't know the local market. They always seem to have a teaser rate, and often bait and switch. Since they make loans, and it originates out of State, my State doesn't have the legal authority to investigate them for any wrong doing. A local lender is ALWAYS preferred."

"Internet based lenders have been such a problem in our market that we now see listings that ask for the pre-approval to be with a lender that the listing agent has already heard of."

What You Can Do

As a home buyer you should focus first on identifying "credible lenders." That is, lenders whom someone you know has had a recent good experience with, or that your real estate agent has had a recent good experience with. Once a few credible lenders are identified, shop among them for the best rates and fees.

Do not assume that simply because a lender publishes a rate and fee offering on the Internet, that they will be able to come through with the funds at that rate. The penalties for lenders that offer bait-and-switch pricing schemes are virtually unenforceable.

Conclusion

Although each one of these issues could be expanded into a ten-page report, our intent is to make you at least aware that these issues exist and offer some suggestions for what you can do about them. The best defense for many of these issues is to have a loyal full time buying professional on your side.

At the National Association of Exclusive Buyer Agents our members are Exclusive Buyer's Agents (EBAs) because they only work for buyers like you. They never list property and they never work for sellers.

Working with an EBA gives you a number of advantages:

1. Since they work for buyers all the time they are typically very familiar with current buyer issues.
2. Since EBAs and their offices never work for sellers, you won't get caught up in a "dual/designated/delegated/limited agency" conflict of interest situation. If you work with a regular real estate company, they will often turn into a dual agent, trying to get the seller the highest price while trying to get you the lowest. This is a disadvantageous position to put yourself in when you are buying something as expensive as a house.
3. An EBA will point out these and other home buying issues and help you avoid or work through them.

There are Exclusive Buyer Agents in virtually all major markets including Hawaii, Mexico and the Virgin Islands. To find an Exclusive Buyer's Agent to interview, visit naeba.org or call 800-986-2322.

We hope this brief report will help to make your home buying process a more pleasant and profitable one.

Good luck with your efforts!

Jon Boyd
2007 President
National Association of Exclusive Buyer Agents (naeba.org)