

Eight Questions a Buyer Must Answer Before Submitting an Offer

1. Boundaries lines.

Do the boundaries of the seller's property on the ground follow the boundaries as described in the seller's deed? They should. A surveyor can plot the deed's boundary description on a topographical map, which will help you determine in a general sense whether the deed matches the ground reality. If the description does not match what you find on the ground, hire a surveyor to figure out what's wrong.

2. Physical and legal access

Does the seller have legal and physical access to the property he's selling? If the seller's property has frontage on a state-maintained public road, the seller should have direct access. If the seller's property does not have direct access to a state-maintained public road, the buyer must make sure that the seller is conveying a legal and physical right to cross the property of another (s) to get to that state-maintained road.

I've faced a situation where the legal access to a seller's property was not the physical road that the seller used. The legal right of way (ROW) should be identical with the physical access road, otherwise problems will arise. The right of way in the form of an easement should be sufficiently wide to suit the buyer's purposes. A 12-foot-wide ROW is wide enough for pick-up trucks, but not wide enough for snow plowing and log skidding.

If the seller's property is accessed by a road that connects the property to a public road, make sure the seller has a recorded document establishing the right to use this road. Make sure this right-of-way easement imposes no restrictions—such as width, traffic weight, types of use—that would limit your intended use of the property.

If you are buying undeveloped property that borders a public road, make sure that there is enough sight distance on either side of your proposed entrance to allow you to get a new-entrance permit from the state or county road office.

3. Do any neighbors have a claim against the seller's property?

If you find a fence line that is not where the seller's deed states it should be, either a neighbor may have fenced in some of the seller's land or the seller may have fenced in some of the neighbor's land. Consent for this may or may not have been obtained. If the encroaching party can meet the state's definition of adverse possession, that party will gain ownership of the fenced in land. A party can also gain use of the property of another by meeting the state's standards. Sometimes, a neighbor (or the seller) will have a claim of one sort or another, though no evidence shows on the ground. You need to ask both the seller and the neighbors if unrecorded claims of any sort burden the property.

4. Is the seller conveying all rights and interests in the property, i.e., is the property being conveyed in fee simple?

The ideal situation for a buyer is to find a seller who is able and willing to convey all rights and all interests in his property to the buyer. This means 100 percent of the property's ownership and 100 percent of all rights in the property. The buyer must have his lawyer check the title for any other party owning a portion of what the seller is selling. This situation often arises when the seller's property has been part of an estate with many heirs. The seller may be selling something less than 100 percent ownership.

If the property has had some right—minerals, timber, water, wind—severed and sold, the seller cannot convey that right to you.

Easements that allow some party to use the seller's property are relatively common; they may or may not be

significant. Utility companies will own an easement allowing them to install and maintain power lines. A neighbor may have an easement to cross the seller's property. A conservation easement involves some right that has been donated or sold, and which the buyer cannot reacquire. These can be very important rights, such as the right to develop the property for housing, the right to cut timber, the right to extract minerals, the right to sell water commercially and so on.

5. Are there any environmental problems?

The seller's property may be the site of an environmental problem, such as a leaking underground storage (petroleum) tank, habitat for an endangered species or an asbestos dump. Or it may be subject to an environmental pollutant originating from beyond its borders, such as air or water pollution. In mining areas, look for abandoned mines, acidic streams and surface subsidence. Maps are available showing floodplains and earthquake zones. Check precipitation maps and ask around to see whether seller's property gets enough rainfall every year.

6. How will you fit in with your neighbors' properties?

Chances are you will get along with your new neighbors and the ways in which they use their own properties. But the country is no different from a city or a suburb—sometimes you have a neighbor who is not to your liking.

I urge buyers to meet all of the seller's neighbors before submitting an offer. Visit them; tell them what you're doing. Make sure you understand what the neighbor does with his property—and how that might impact you. If you are not comfortable with the sights, sounds and smells around the seller's property, find another place. You will not change the behavior of someone who's been doing whatever it is before you arrived. Don't move into a community threatening nuisance suits. If you plan to significantly change the uses of the seller's property, you should flag your plans for your neighbors. Likely opposition may persuade you to find another place.

The future uses of neighboring property are hard to predict. A new neighbor can seek a zoning variance or new classification when he wants to do something different with his property, such as divide property into 20-acre farmettes, install a wind farm or build a sawmill. Rural property that is zoned for agriculture can be used for new activities that newcomers might find offensive, such as a dairy farm or confined-poultry operations. A buyer can get a sense of what might be near-term neighbor plans by talking with the seller's neighbors as well as local planning and zoning officials. This information provides no guarantee against zero change.

A prudent buyer needs to protect himself to the extent possible by asking the question, what is the worst possible scenario from my perspective that might occur on my neighbors' properties?

7. Does the property have enough water to do what you want to do?

Each property has surface water and underground water. You may need to look at both to determine whether you have sufficient quantity and quality to satisfy your needs. If the seller's property is dependent on irrigated water, water leases or purchased water, make sure that every such arrangement will continue beyond your purchase.

If your plans involve changing water usage, particularly increasing it, you will need to determine whether you will have access to the quantity and quality that you need.

Test water quality from a spring or well that serves the seller's residence. Water samples should be comprehensively tested.

8. Fences.

Fence law and customs differ from state to state, county to county, neighborhood to neighborhood. In a general sense, you are responsible for one half of the boundary fence around your new property; there are exceptions, of

course. The 50 percent requirement means that you and the adjoining neighbor maintain and build your common fence, splitting the effort and cost. Or it could mean that you assume the seller's portion of the fence and the neighbor assumes whatever he claims is his portion of the fence. You may or may not get a straight story as to which section of fence is yours. Don't be surprised if you wind up with a little more than your share.

So the first question is:

How are fence responsibilities apportioned on the seller's farm?

Do not be surprised if the "systems" vary, neighbor to neighbor.

Fence question two is:

What portion of the boundary fence will you, as the new owner, be responsible for? Or, if the responsibilities are shared jointly, which portions have to be rebuilt?

Fence question three:

How much will it cost over your first year to get your share of the boundary fence up to the standard of "legal fence" in your state?

Fence question four:

If you are going to change the uses of the farm, what additional fencing—and what new types of fencing—will be required? If you want to operate a horse farm, you should replace cattle fences made of barbed and woven wire with safer materials.

Be prepared to hold up your end of shared fencing.