



DENISON  
WHITE PAPER

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# YACHT PURCHASE PROCESS

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## FINDING A BROKER



The maritime and yachting world is rife with jargon (flag state, charter certificates, port state control, etc.) and the sales process adds to that the terms “listing broker” and “selling broker.” The “listing” broker has the listing of a particular yacht for sale, and the “selling” broker will “sell” a listed yacht to a client (the buyer). Most yacht brokers will perform both services, when they list a yacht that they sold previously to the client/owner.

While brokers can represent both the seller and the buyer in one transaction, beware of conflicts of interest which may appear in this situation; that broker’s loyalty is split and it may not be the best business approach for neither the seller nor buyer.

The key point here for you, the potential buyer, is to find a broker that you trust. Clients obviously will look for referrals from friends and acquaintances, but if the relationship is not right, then don’t be afraid to look again. A good broker should be looking after your interests only. They should ask questions about how you’re going to use the yacht, where you’re going to use it, your budget for purchase and ownership, whether you wish to defer some costs of ownership with occasional charters, whether you prefer high speeds or leisurely cruising, your need for cabins depending on how many guests you like to invite, and, in general, your personal needs for high-end interiors and exterior finish.

First and foremost, if a broker is representing you as a buyer, they have the fiduciary duty to achieve the best value for price, and not be afraid to urge you to walk away from a transaction if they sense something is amiss. Your buying agent should bring value to the transaction. Remember, although they share in the listing agent’s commission paid by the seller, their loyalty should be to you. Your cost of the transaction does not go up simply because you decide to engage a buyer’s broker. Rather, it should go down, if you have an effective broker negotiating hard on your behalf. Furthermore, it is foolish to rely on the listing agent to handle both ends of the transaction. That agent will not have your best interests at heart, and it costs the seller no more in commission whether there are one, two, or more brokers involved. That said, secure an agent you trust on your side of the transaction.



## KNOWING THE MARKET

After getting your answers on some of those key questions and perhaps even noting what yachts have grabbed your attention in your preliminary research, your broker should start to search the market on your behalf. The market is worldwide, with yachts available for purchase on almost every coastline imaginable. A good broker will be aware of current market trends, what boat shows are coming up, where the deals are, and, of course, be able to identify which boats may meet your wants and needs. A good broker will eliminate unqualified boats from their search (like from questionable builders), and present the remainder in

an easy-to-read comparative market report. After you have had an opportunity to make the final selection, the broker can then begin the process of scheduling viewings.

As the buyer and their broker view potential purchase targets, the broker should be again listening to the client's reactions when seeing particular yachts, expanding the selection or narrowing down on the style and type of yacht to meet the client's preferences. The broker should also be watching the market, listening to the seller's team as they view yachts, and gathering information about operating costs, the yacht's history, and charter performance.

The broker should also be guiding the client on elements of the yacht's layout and presentation which may have an impact on the purchase, use, and cruising itinerary of the yacht. For US-based buyers, the broker must obviously know the domestic market, but also include internationally available yachts, while understanding and explaining any differences which occur in yachts built to US specifications versus international. The broker should be able to explain price differences, technical differences, time on the market, and any other costs, such as shipping, conversions, refits, and other after-sale expenses.

At this stage, it is also important that the broker consider the client's desire for the yacht to go into charter service after the purchase, as this brings compliance elements which will need to be reviewed and included in the selection of candidate yachts.

This process of viewing may take some time, potentially several months. During a show, a number of yachts can be viewed in one day, but

clients are encouraged not to “settle” – keep looking and communicating with your broker. There's a boat for everyone!



Ask your broker what it means when a yacht ad is qualified with the descriptive legend “not for sale to US residents in US waters”. They should know ways to get you aboard notwithstanding.

Finally, don't be afraid to allow your broker to “register” you as a client. Or better, try offering them a “broker of record” letter (a format for this can be provided by the broker). This avoids any confusion during the search and subsequent sale as to whom the broker owes their loyalty and fiduciary duty. It also avoids any possibility of a post-sale legal claim by a broker who claims to have procured the sale or you as a buyer.



## MAKING AN OFFER

Once you've decided on the yacht, the time will come to make an offer. Your offer, called a "standard purchase offer", is converted into a PDF and sent via email from your broker to the listing broker. Once received, you should expect a response to your offer within two banking days. It is important to note that your initial offer to the broker will most likely be countered. In fact, your broker and the listing broker may go back and forth with offers before arriving at a mutually agreeable price, and it may take 2-3 counter offers before a decision is made. Your broker will have templates for the offer and will provide guidance on responses to counter offers, checking the market throughout.



Much like real estate, standard offer templates have been approved by attorneys working for the main trade associations. In Europe, that would be the Mediterranean Yacht Broker's Association (MYBA) and in the US, the International Yacht Brokers Association (IYBA). You need not get a lawyer involved simply to review the terms of these templates. They have been drafted by lawyers retained by the associations and generally contain terms that are reasonably well-suited to protect both buyers and sellers.

## GOING UNDER CONTRACT

After an offer has been accepted, the yacht will go under contract. Again, like in real estate, the broker will provide templates for completing the different stages in the transaction. At this stage, and depending on your broker's depth of knowledge in legal contracts (some brokers were or are practicing attorneys), it may be advisable to engage a maritime attorney familiar with large yacht transactions. The attorney will also need to understand the client's needs, flag state rules, and suitable ownership structures for yachts, which will need to be in place at the time of closing. The documentation is complicated and a good maritime attorney will protect the client's liability in the purchase and through the ownership of the yacht.

The contract will provide a timeline for milestones through the rest of the process, such as surveys, acceptance, and closing. It will also include a list of documentation for the seller to provide for the buyer's team to complete a proper due diligence review of the yacht and her certificates ([see separate sidebar on page 9](#)). Similarly, you as the buyer should anticipate providing "Know Your Customer" type information to your broker; financial compliance laws in both the US and in Europe require that brokerage entities meet anti-bribery, anti-terrorist funding and other anti-financial crime statutes. Information to be provided will include full name, proof of address, and nationality, as well as background information regarding the source of wealth and principal's business activity.

After the purchase agreement is signed, it is at this point you will make your deposit on the vessel. These deposits are typically 10% of the purchase price of your vessel.

From contract to closing, you can expect a typical timeline of around 30 days. This is to allow for surveys and sea trials to be performed. However, delays can, and do, happen. You can expect a delay in the closing process during busy times of the year, like holiday times or major boat shows, as surveyors or shipyards may have limited availability to survey or haul your vessel.



## THE SURVEY PROCESS

A good condition survey will form the starting point for the new owner's husbandry of a high-value asset. The cost of survey is for the buyer, including the haul out and fuel used for sea trial. There are a number of reputable survey companies which the broker will help the client select from in order to find one that is most suitable and experienced with the particular type of yacht selected. Depending on the size of the yacht, a survey may take several days, with four or five separate maritime surveyors specializing in areas such as machinery, paint coatings, electrical installations, and hull construction. It is important to clarify that this is a "condition" survey, which is quite separate from the compliance surveys which will be performed separately by the flag state's authorized representatives.

The condition survey will include a sea trial where the engines and machinery will be put through their paces, including a full power run and noise measurements. Many clients will choose to be present for the sea trial. Surveys should also include a hull inspection with the yacht hauled out of the water; availability of haul out facilities will often drive the scheduling of surveys. The condition survey report

will include a general description of the yacht and her outfit with comments on the state of maintenance and repair. Additionally, the survey report will include a list of recommendations, some of which may be "starred" as safety items.

Following the survey, the contract will provide some time for the client and the broker to review the report, at which point there may be some more negotiation on price based on the content of the report. For example, a survey report may include comments such as an air conditioning chiller nearing the end of its useful life – the broker should be able to provide a rough estimate to the client of the cost impact of these comments and a supplementary offer may be submitted taking that cost impact into consideration. These negotiations will conclude with one of two possible outcomes, defined in the purchase contract: either "rejection" or "acceptance" of vessel.

At acceptance of vessel, the rest of the contract will flow toward closing, guided by the broker and the maritime attorney (if hired). You can expect that the typical time from acceptance of the vessel to closing to be about two weeks (unless the vessel is financed).

## THE CLOSING PROCESS

Depending on the tax implications of the particular jurisdiction and the corporate structure used by the buyer, closings may take place in a marina or offshore. There will be a requirement for notarized representatives of both buyer and seller to be present, plus the escrowed transfer of funds. Again, the broker will guide the buyer through the process, as the listing broker should be representing the seller and his or her interests.

## DON'T FORGET THE REST OF THE STORY

Be ready to own the yacht after the closing. Hiring suitable crew, finding dockage for the yacht immediately after closing, establishing yacht operating bank accounts, developing a budget, possibly retaining a management company, and planning a refit (if any) will all require help from your broker. Hiring a suitable crew can take some time, even if some of the existing crew are available to transfer to the buyer. A good buyer's broker should have the resources to fulfill those needs as well, such as crew placement, charter management, and technical and compliance management associates.

The team of yacht experts at Denison Yachting welcomes the opportunity to work with current and prospective yacht owners and the teams that support those owners in the development of specific projections for their yachts. For more information on our superyacht services, please visit [www.DenisonYachting.com](http://www.DenisonYachting.com) or contact Ben Farnborough directly at [Ben@DenisonYachting.com](mailto:Ben@DenisonYachting.com) or 954-632-4740.



## COMPLIANCE + CERTIFICATION

Certificate requirements for yachts are complicated, and are legislated by multiple international and domestic agencies. Another article in this series addresses the compliance map in more detail, but the certificates required for a seller to produce should include the following as a bare minimum, depending on tonnage and other aspects regarding the service and cruising location of the yacht:

- Certificates of Registry for the yacht and any tenders included in the purchase
- International Tonnage Certificate
- Certificate of Class
- International Load Line Certificate
- Pollution Certificates (separate certificates for oil, air, sewage, antifouling, and engines)
- Energy Efficiency Certificates
- Safety Construction Certificate
- Safety Equipment Certificate
- Charter Compliance Certificate
- Safety Radio Certificate
- Radio License
- Minimum Safe Manning Certificate
- Safety & Security Management Certificates
- Maritime Labour Certificate
- Certificate of Financial Responsibility
- Non-Tank Vessel Response Plan
- Oil and Garbage Pollution Emergency Plans
- Records of Maintenance performed and evidence of planned maintenance system in place
- Logbooks
- Insurance Binder including civil liability cards for bunker oil pollution and wreck removal



MIAMI  
DANIA BEACH  
FORT LAUDERDALE  
WEST PALM BEACH  
STUART

DAYTONA BEACH  
BRADENTON  
NAPLES  
TARPON SPRINGS  
CHARLESTON

ANNAPOLIS  
JERSEY CITY  
MONTAUK  
SOUTHPORT  
NEWPORT

SAN DIEGO  
NEWPORT BEACH  
MARINA DEL REY  
SAN FRANCISCO  
SEATTLE