

January 23, 2010

Obtaining Financing



Getting Financing Isn't What it Used to Be...

After a fully-executed copy of the contract is returned to the buyer's attorney, and if you intend to finance a portion of the purchase price of your apartment, the standard contract requires that you apply to a "lending institution" for a mortgage loan within 7 business days if you're buying a co-op and "promptly" if you're buying a condo. Remember, a number of buildings have restrictions on the amount of financing that you can secure using your co-op shares or your condo as collateral. A few so-called "exclusive buildings" do not allow any financing. If financing is permitted and you plan to obtain financing, unless you have a relationship established with a bank, you will need to find a lending source or use the services of a mortgage broker to find an apartment loan. After the carnage of the financial meltdown, the number of mortgage brokers still in business has diminished dramatically. Purchasers often go directly to banks these days, as that's where the money is (with thanks to Willie Sutton). The right mortgage broker can make the process significantly easier, while an incompetent broker can cause deals to blow up and underwriting of a loan not to happen. Stating the obvious, check mortgage broker references very carefully.

Things Have Changed

The process by which apartment loans are underwritten by lenders has changed significantly. "No Doc" loans and loans with no income verification (affectionately called "liar loans") have fallen by the wayside for the most part. Banks are now interested in the financial condition of the co-ops and condos. Many questions get asked and documents actually get reviewed. Some buildings will not qualify because of physical or financial issues. Buyers must factor the financial well being of the

proposed co-op or condo into consideration at the very early stages of seeking financing, so that problems don't arise after the contract is signed. Your proposed lender should be queried as to whether it has made loans in your building before and whether the building's "owner occupancy" ratio satisfies the bank's underwriting requirements.

Beware of Out of State Banks and the Internet

Be extremely cautious about using out of state banks unfamiliar with the zaniness of co-op and condo transactions in Manhattan and stay away from Internet lenders with no physical offices in New York.

Timing

Give yourself at least 30 days to obtain a commitment letter and another 30 days to complete the underwriting process and schedule a closing. Unless you have a strong banking relationship that can deliver on turning things around quickly, give yourself plenty of time to complete your financing.

Collateral For the Loan

Due to the legal distinctions between coops and condos, the collateral for each differs:

- with coops, the bank will record a "*security interest*" or a lien against the shares and the proprietary lease by the filing of a form called a "*UCC-1*" in the county where the apartment is located. The bank will actually hold the stock certificate evidencing the shares allocated to your apartment and the originally executed copy of the proprietary lease, until the loan is paid in full.
- with condos, the bank will obtain a "*first mortgage lien*" against the condo apartment and will record the mortgage in the county where the apartment is located.

Make Sure the Application is Submitted Promptly

If you do use a mortgage broker, make sure he or she complies with the time constraints discussed above. Although, as a general rule, submission of the loan application to the mortgage broker will constitute submission to the lending institution, that issue should be expressly stated in the contract. Compliance with the application requirements will become very important if the bank should reject your application. Even if you have complied with the contract by delivering the loan application to the mortgage broker on time, if the mortgage broker failed to deliver

the application to the bank until several weeks thereafter, a disgruntled seller could claim that you materially breached the contract by not submitting the application directly to the bank in a timely manner. A contract deposit dispute could ensue requiring litigation to determine which party is entitled to the escrow held by the seller's attorney. No one wants that to happen.

Residential Reality

Here's the bottom line when you apply for a mortgage loan: keep in close touch with your mortgage broker or banker. He or she is your new close personal friend.

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