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Entering Into the Contract of Sale



Unlike other states where the contract of sale is negotiated for purchaser and seller by real estate brokers, in New York, the contract of sale is negotiated by the attorneys. Although the basic contract is a printed form, a rider is generally added to make up for deficiencies in the form contract and to deal with issues unique to the particular transaction. Believe it or not, since each building is operated differently and special situations and financial points often arise, the contract can go back and forth several times before it's executed. Depending upon a party's bargaining power, delays in getting the contract signed may cause a deal to fall through when a better offer arises before the contract is signed. Accordingly, the contract must be negotiated carefully but swiftly.

Which Issues Get Negotiated?

Here are a few of the issues that should be resolved or addressed when the contract is negotiated:



whether any renovations or modifications have been made to the apartment, and if so, whether the requisite governmental and Board approvals were first obtained;

- that there are no pending or threatened claims or litigation (including tax proceedings) against the seller or the building;
- that, at closing, all plumbing, heating, electrical and air conditioning systems in the apartment, and all mechanical systems, will be in working order and that the apartment will be free of leaks;
- that, at closing, if an estate is the seller, releases from the federal and state taxing authorities will be delivered, together with a copy of the will and current Letters Testamentary appointing the estate's executor, as well as an "affidavit of solvency" executed by the executor of the estate;
- that seller is neither a party to, nor is contemplating the filing of, a proceeding seeking the protection of the bankruptcy laws.

The Lawyers Will Work it Out

The above is by no means an exhaustive list of issues, but the points raised above should give you an idea of the matters that have to be addressed when a contract is negotiated. Some lawyers love to say "No" to just about any request that the lawyer on the other side makes. I guess saying no greatly reduces the possibility of making a mistake. In most cases, however, the lawyers cooperate and a compromise on the requested changes and additions to the contract are worked out.

What Happens After the Contract is Signed

Once the contract is fully executed:

- a purchase application is made to the Board for approval of the sale and financing is applied for;

- if buying a co-op, a lien search is always ordered by your attorney to determine whether there are any outstanding liens or encumbrances against title; and
- if buying a condo, a title report is always ordered by your attorney for the purpose of obtaining title insurance.

Although "leasehold insurance" is available for co-op transactions, it is rarely obtained and most banks and buyer's attorneys rely solely on a lien search.

Residential Reality: Things Have Changed...

In the old days, if the contract wasn't turned around in a day or two, the earth's tectonic plates would start to shift and that "end of days" feeling would be broadcast by the brokers. Today, there is a more sensible flow to the negotiation of the contract and the time frame in which the contract is executed. Yes, there are deals where things have to happen quickly because of the threat of other bids. In many cases, however, the reality of the real estate market has caused things to slow to a reasonable and appropriate pace.

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