



*From the Law Office of Ronald H. Gitter, Esq.*

Addressing the Realities of Residential Real Estate

## Mopping Up 2010 and What to Expect in 2011

**December 11, 2010**

### **Looking Back at the Good, the Bad and the Ugly...**

2010 has been a challenging year for the residential real estate market in New York City, to say the least. As the year comes to an end, here's a look at a few of the significant developments that have impacted buying, selling or owning a co-op or condo in Gotham.



### **Definitive Data is the Biggest Innovation of the Year**

A convergence of sorts has occurred between the Internet and the availability of data to track contract signings, closings, comparable quarterly data and national trends. To use a fairly beat-up expression at this point, the playing field has definitely been leveled when it comes to knowing what the brokers know behind the firewall of the industry-driven RLS system. Data collection and analysis sites such as [matrix](#), New York City's [ACRIS](#) system, [streeteasy](#), [urbandigs](#), and a host of other online services, give you the opportunity to track sales data, review statistics and create your own metrics for following trends. The consumer has never been in a better position to view transactional data as it is occurring and make decisions about a particular property based on the consumer's own analysis. If you don't take advantage of the availability of these resources, as a client of mine likes to say, "shame on you."

### **ILSA: Not the Name of a Hurricane**

One of most intriguing developments this year is the battle between struggling condo developers and the unhappy purchasers who want out of their deals. Thanks to The Interstate Land Sales Full Disclosure Act, a Federal statute enacted in 1968, known as "[ILSA](#)", lawyers have been able to persuade the lower federal courts that failure to comply with certain arcane disclosure obligations should give rise to a right of rescission on the part of the purchaser seeking redress. Although the parties are waiting for the lower court decisions to work their way up to a final appeal and a definitive decision, many contract deposits will be at risk if the courts finally decide in favor of the disgruntled purchasers. As the new construction condo market is starting to emerge from

meltdown, any action by the courts that forces developers to return deposits won't be helpful to the housing recovery. For more on this, see my post "[More Ill From ILSA](#)".

### **Caution: Dual Agency Ahead**

Effective next month, various changes to the "[dual agency law](#)" in New York will come into effect with significant ramifications for brokers and their clients. Particularly for first time home buyers, it can be unclear and confusing as to exactly which party the broker represents. As crazy as it sounds, if the buyer and the seller agree, the same broker can represent both parties in a real estate transaction. The broker just gives less "loyalty" to each party. At least the dual agency relationship now has to be consented to in writing by both parties, which will help inform the parties and clarify who's representing whom. What is a significant improvement is the ability of brokers to obtain advance consent to a type of dual agency, called "dual agency with a designated agent," which occurs when agents from the same brokerage firm are on different sides of the same transaction. Since large brokerage firms often find themselves in this situation, this advance consent to dual agency makes practical sense and will be helpful to both brokers and to consumers. *Memo to File:* unless there is a very compelling reason to have the same person represent both sides in a real estate negotiation, avoid having the broker act as dual agent.

### **They Attack!**

When Isabella Rossellini saw fit to make a David Lynch-like public service announcement about the mating habits of bedbugs, you knew that this critter's time had arrived. And arrive they have. According to the [Post](#), there have been over 28,000 bedbug complaints made to 311 this year. Lawyers have modified their contract riders to add representations about the bugs and managing agents get queried to make sure a buyer isn't walking into an infested apartment or an infested building. Further, the newly enacted New York State "[Bedbug Disclosure Act](#)," which appears to apply to co-ops and to condo rentals, will improve disclosure by requiring a one-year history of bedbug activity. But let's face it, these guys can show up anywhere, anytime, and with no notice. Without question, the publication of record for all things bedbug is [brickunderground](#) (e.g. how to check your holiday visitors for... you guessed it). There are also many other online services such as [bedbugger.com](#) to help educate and eradicate. We might debate how they got here, but we can agree that eliminating the problem is going to take many, many years. *Memo to File:* If the problem gets much worse, buyers will have to seriously consider a pre-purchase apartment inspection for this issue alone.

### **No More Short-Term Leases**

As a hallmark card to the hotel industry, the New York State legislature enacted a prohibition against leases for less than thirty days which was signed

into law by Governor Paterson in July of this year. As I indicated in "[What's the Big?](#)," since most co-ops don't allow subleases, let alone short-term leasing, and since most condos require a lease of no less than one year, the only folks really impacted by this new law appear to be landlords illegally running short-term rental facilities and tenants who are illegally subletting anyway. In the world we live in today, inadequate background checks on tenants or allowing someone you don't know, who you connected with on Craigslist, to occupy your apartment, makes no sense...

### **Lenders Have Issues**

Those of us who address financing issues every day know how difficult and unpredictable banks have been during this past year. In one recent \$800,000 co-op transaction, the underwriter insisted that the flat screen included in the sale, valued at about \$500, be removed from the contract, as it was "impacting" the loan to value ratio. And the refrain from the mortgage broker or loan officer relative to the Dr. Evil request from underwriting is always the same: "just do what they want!" To say that the pendulum has swung in the other direction away from undocumented loan applications doesn't quite capture the change in mindset that pervades the lending industry these days and for the foreseeable future. Except for the folks at top of the pyramid, where the lending window is always open and funding is fun and available, be prepared for the standard underwriting process to take 30 to 60 days, and perhaps longer, no matter how qualified you are for a co-op or condo loan. For more on navigating the chopping waters of residential financing, see "[Banks Get Funky](#)."

### **Residential Reality: Looking for the New, New Normal in 2011**

There's that motor oil commercial running right now, where the car is dragging an anchor down the road and can barely make any forward progress. The New York City real estate market is not in the same position; there clearly seems to be forward movement, it's just not at the pace we would all like. All eyes now turn to Wall Street, as bonus season will define the success of the real estate market in the first quarter of the new year and perhaps for many months thereafter. But there are only so many "starchitecture" apartments and a small number of available buyers for those unique and pricey units. The rest of the real estate industry needs the job market to improve dramatically and for interest rates to remain low for most of next year to facilitate a real estate market that approaches something we once called normal. Many in the real estate business I talk to are holding their breath and crossing their fingers in hopes for a robust 2011. And a healthy real estate economy next year will be good for all of us. Keep the Twitter feed positive... it can't hurt.

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110 East 59th Street, 23rd Fl., New York, NY 10022 Tel: 212.826.2405

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