



Addressing the Realities of Residential Real Estate

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You're Not in Kansas Anymore



Moving to New York from another state or from another country presents its own set of unique challenges. We do things differently around here, particularly when it comes to residential real estate. Here are nine issues to keep in mind during your search for an apartment in Gotham.

Lawyer Up

Unlike a number of states and many countries where lawyers play a minor role in a real estate transaction, in New York, lawyers are responsible for negotiating the contract, conducting due diligence and attending to all other transactional matters on behalf of the purchaser and seller. After the offer is accepted, the brokers supervise the organization and submission of the purchaser's ["Board package"](#), but the attorneys handle all the nuts and bolts of the transaction from contract to closing. Memo to File: Use caution when the seller's broker is recommending an attorney for the buyer...

Due Diligence is Completed Before the Contract is Signed

In many states, the purchaser is given an inspection period after the contract is signed that allows the purchaser to tie up the property until the inspections are completed. In New York, however, there is no lock down period and [due diligence](#) must be completed before the contract is signed. Yes, another offer can come in during the due diligence period and the purchaser can be outbid. We're not at the same level of market frenzy as we were a few years back, but higher bids do get made, particularly since so many apartments are being sold at significant discounts from the *go go* days. As a result, due diligence has to be completed as quickly as possible.

Less Privacy Than Facebook

The application process for a co-op and for most condos is an invasive journey into the personal and financial details of an individual's life. You will be required to make extensive financial disclosure, including the delivery of copies of your complete tax returns with all schedules for the last two years. Boards are sensitive to the confidentiality issues and Board packages are shredded after the application is approved or rejected. That being said, the

notion that eight strangers will be looking over your finances can be an unnerving experience. Condos may offer greater flexibility in verifying the purchaser's financial wherewithal, with co-ops, however there's usually no negotiation. If you are unwilling or unable to provide complete financial disclosure, make sure your broker is aware of your boundaries so that you get pointed in the right direction.

Piercing the Veil

Using an entity to acquire real estate for limited liability and privacy purposes is accepted practice all over the globe. In almost all cases, however, purchasing a co-op in the name of an entity is a non-starter. When a condo is being purchased to achieve that result, in light of greater security concerns since 9/11, the owners of the entity will have to be disclosed during the application process, including the intended occupants of the apartment. Refusal to comply with these disclosure requirements will only slow up the transaction and may result in a default by the purchaser.

Avoid Out-of-State Banks

You probably have a great banking relationship back home, but if you are seeking financing for the purchase of an apartment, unless your bank is in the business of regularly making co-op and condo loans in New York, it is often a mistake to use an out-of-state bank for financing. Out-of-state banks have difficulty digesting how co-ops and condos operate in New York and can impose conditions that the co-op and condo often can't satisfy. In today's banking environment, even banks active in the co-op and condo market can be overly cautious when it comes to underwriting co-op and condo loans. For the sake of the transaction and your sanity, use a lending institution that is a significant player in the residential lending market in New York.

Diplomats May Have Issues

Serving as a diplomat is an honorable profession, except when it comes to purchasing a co-op or condo. Diplomatic immunity shields diplomats from liability and that makes co-op and condo Boards very nervous. If a co-op or condo does roll out the welcome mat, expect to waive your diplomatic immunity and be open to other requirements, such as a maintenance or common charges deposit. Having a knowledgeable broker in this scenario will make a big difference.

The More Contacts with the United States the Better

Co-op and condo Boards as well as domestic lenders can be concerned when a foreign citizen has little or no contacts or assets within the United States. The greater the contacts with this country, the easier the purchase process should be. Foreign citizens can be asked to designate an agent for service of process, so that the co-op or condo can serve legal process on the foreign buyer in the event of a dispute. Lenders may also require substantial deposits to be maintained in this country before financing can be obtained. Foreign borrowers should anticipate higher interest rates and a lower percentage of

the purchase price to be financed. In any event, expect significant scrutiny when you don't have a social security number and have difficulty verifying your financial abilities and assets, even if you are an all cash buyer.

Beware of the Mortgage Recording Tax

In addition to the standard closing costs, such as title charges, the cost of an appraisal and lender underwriting fees, New York State and New York City also impose a hefty "tax" for the privilege of recording a mortgage. That recording charge varies from 2.05% to 2.175% of the face amount of the loan depending upon whether the amount borrowed is more or less than \$500,000.00.

Be Thankful They Don't Take it All

New York State and the Internal Revenue Service are twitchy about out-of-state and foreign sellers. When an apartment is sold, in addition to standard transfer taxes payable to New York State and New York City, here's what a non-resident of New York or a foreign citizen also has to pay at closing:

To New York State:

The seller of a co-op or condo, who is not a New York State resident or who does not qualify for a federal exemption from taxation (principally, someone who has occupied the apartment as his or her primary residence for two out of the past five years), is obligated to make an estimated capital gains tax payment to New York State equal to 8.97% of the net gain on the sale of the apartment. The payment has to be collected at closing. No exceptions.

To Internal Revenue Service:

In addition, if the seller can't deliver a "FIRPTA Certification", indicating that the seller is not a foreign citizen (as defined by Federal statute), a capital gains tax withholding payment equal to 10% percent of the purchase price will also be collected at closing and paid to Internal Revenue Service. IRS will confirm the actual tax that is due, but the seller's attorney needs to apply for that determination soon after the contract is signed in order for IRS to respond in advance of the actual closing date.

Residential Reality: Faster Than A Speeding Bullet

More than anything else, out-of- towners and foreign buyers will need to fasten their seat belts. Once an offer is accepted, the New York real estate vortex begins swirling and no one can escape the gravitational pull of getting the transaction completed as quickly as possible. Particularly in a depressed real estate market when a buyer might change his or her mind if there's too much time to think things over, expect to be poked and jabbed all the way to the closing table. But then again, you're not in Kansas...

For more on what to expect after your offer has been accepted, see "[Seven Steps to Heaven: From Contract to Closing](#)".

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