

# A GUIDE TO BUYING AND FINANCING A COOPERATIVE, CONDOMINIUM OR RESIDENTIAL HOME IN NEW YORK

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Eric P. Gonchar provides consultation to buyers and sellers through every aspect of their residential real estate transactions. He ensures that clients have a clear understanding of every phase of the negotiation, financing and closing of their purchase or sale and receive as much guidance as they require. Equally as important, Eric has the ability to troubleshoot problems and suggest ways to resolve them. Each transaction is handled with special care and personal attention. A thorough due diligence review is performed and explained to the client. These qualities are learned only through years of hands-on experience. As a note, Eric gives special attention to first time and foreign purchasers, as well as new development purchases and Internal Revenue Code Section 1031 property exchanges.

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# I Foreword



This Guide is designed to help a purchaser navigate the road to home ownership. It contains information about shopping for a home and obtaining a loan. Purchasing a single-family house, condominium or cooperative apartment is a very important financial and personal decision. This Guide will assist the purchaser by outlining what the differences are between a residential house, condominium apartment or cooperative apartment, what to expect when purchasing a home and what the closing costs should be. This Guide is merely an outline of the subject and is not intended to replace the advice of a real estate broker, loan officer, mortgage broker, accountant or attorney. It is recommended that the purchaser consult with and rely on the foregoing professionals in making the final decision to purchase a home.

# II The Decision to Buy a Home



Before purchasing a home, a purchaser needs to decide whether he or she really wants to own a home and can afford the home. Affording a home includes deciding whether or not the purchaser qualifies for a mortgage. Whether purchasing a home as a single person or with a spouse or partner, a purchaser will want to learn about the home buying process. A purchaser has to understand what type of home he or she wants, what neighborhood to live in, how much to spend on a home and what type and how much financing suits the purchaser's needs.

The choices, the paperwork, the legal terms and the long-term financial commitment can be over-

whelming. Just remember, every homeowner today was once a first time purchaser and traveled this road before. This Guide will give the purchaser the basic knowledge every purchaser will need to take the steps to home ownership. The steps to home ownership are as follows:

1. Analyze finances, know how much to spend and obtain pre-approval from a mortgage company
2. Select a real estate broker
3. Shop for a home
4. Shop for a mortgage
5. Shop for an attorney
6. Find a home, make an offer and negotiate the price
7. Inspections (generally not required for co-op and condominium apartments in New York City).
8. Sign a contract of sale and make the down payment
9. Obtain a mortgage
10. Obtain homeowners' insurance and title insurance
11. Attend the closing

There are numerous decisions that a purchaser must make before buying a home. Of course, the purchaser must decide whether to buy or rent a home. More importantly, if purchasing a home, the purchaser must be able to afford the expenses associated with buying and owning a home. The decision to buy a home is a very serious commitment. A purchaser must be responsible and be prepared for a large financial obligation. Over the years, it has been proven that home ownership is a good investment its value can increase over time and it provides a purchaser with shelter and a place to live. However, a home is not a guaranteed investment. If a home is not maintained or if a neighborhood deteriorates, the value of a home may decrease. Maintaining the home and keeping the community safe and clean requires a dedicated effort. Furthermore, owning a home provides substantial tax benefits. Interest paid on a mortgage and real estate taxes are deductible from annual income taxes.

Once the decision is made to purchase a home, a purchaser needs to determine if he or she can afford the home. The purchaser must meet three financial requirements: (i) have the down payment and sufficient funds to cover the closing costs; (ii) are able to pay monthly housing expenses; and (iii) qualify for a mortgage.

## **A. Down Payment and Closing Costs**

The typical and customary down payment in New York is 10% of the purchase price. The down payment check is usually tendered at the time the contract is signed by the purchaser and is made payable to the seller's attorney, who will hold the deposit in escrow pending the closing. The down payment check is usually the purchaser's personal check.

The closing costs for a house or condominium apartment can be substantially greater than the costs associated with a cooperative apartment.

Also remember, purchasing a home from a developer or sponsor can increase the purchaser's closing costs even more. For a more accurate picture of closing costs, please review the section of this Guide entitled "Closing Costs."

## **B. Monthly Expenses**

Monthly expenses (sometimes called "carrying costs") can vary greatly between residential homes, condominiums or cooperative apartments. For a residential home, a purchaser can be expected to pay principal and interest on his or her loan, as well as real estate taxes and homeowner insurance. For a condominium apartment, a purchaser will pay principal and interest, real estate taxes and common charges. For a cooperative apartment, a purchaser will pay principal, interest and maintenance. The foregoing does not include budgeting for repairs and improvements to the home. As a note, since condominiums and co-ops maintain a master insurance policy on the building, insurance covering the apartment is not necessary. Many lenders will arrange monthly payments to include principal and interest as well as real estate taxes

and homeowner insurance, where applicable. The lender will establish an escrow account so that with each payment of principal and interest, one twelfth of real estate taxes and insurance are also paid to the lender who then pays the taxes and insurance when due (escrows do not apply to cooperative apartments).

### **C. Loan Qualification**

Lenders will look at several factors when evaluating a purchaser's qualifications for a home loan. The lender will review the purchaser's funds available for the down payment and closing costs and the purchaser's ability to pay monthly housing expenses. Accordingly, a lender will review yearly income, existing debt and what problems a purchaser may have had in the past with other loans. A lender will review pay stubs, W-2 statements and tax returns. The purchaser will have to complete a financial statement reflecting assets and liabilities (and provide backup paperwork regarding the assets and liabilities). A lender will order a credit report to determine if there are any prior credit problems of the purchaser and the history of paying creditors on a timely basis.

### **D. Looking for A Home**

Shopping for a home can be best accomplished with the help of a real estate broker. The assistance of a real estate broker can be invaluable in finding the right home, in the right location, at the right price and in navigating through sellers, counter offers and closing. To start, pick up a Sunday newspaper, a home listing guide or surf the internet. Typical considerations may include the following:

1. Location – convenience to public transportation, entertainment, shopping and restaurants, neighborhood, safety, up and coming area
2. Condition of home – new, renovated or “fixer-upper” (if a co-op or condo, what is the condition of the building?)
3. Community and municipal organizations – schools, banks, hospitals religious and recreational facilities, parks and playgrounds
4. Amenities – doormen, health club, deck, patio, sunlight

### III

## The Differences Between Co-ops, Condos and Residential Homes



There are significant differences between a residential house, condo apartment and a co-op apartment.

### **A. Residential House**

A residential home is usually a one-to-four-family house built on a plot of land. The purchaser is given a deed to the land which is recorded in the municipal office where the property is located. The purchaser pays his or her own real estate taxes on the land. If the purchaser needs a loan to buy the house, the purchaser will sign a mortgage at the closing. The mortgage is then filed in the municipal office where the property is located. The closing costs to purchase a residential house are usually a little higher than the costs for a condominium and substantially higher than a cooperative apartment (see section entitled “Closing Costs”).

### **B. Condominium Apartment**

The ownership of a condo apartment is similar to the ownership of a residential home. In a condominium, a purchaser owns the apartment plus a percentage of the common areas of the building (known as “common elements”) and lives in the apartment pursuant to the terms of a condominium declaration. Similar to a residential house, the purchaser will take title by deed, which is recorded in the municipal office where the property is located. The purchaser pays monthly common charges which are a share of operating costs of the building, including employee salaries, insurance, fuel, management fees, cleaning and upkeep of the building. The purchaser will also pay real estate taxes allocated to the apartment. There is generally no approval process or financing limitations on the amount of money a purchaser can borrow to purchase the condominium apartment. If the purchaser intends to obtain a loan to buy the condo apartment, the purchaser will sign a mortgage at closing which will be recorded in the municipal office where the property is located. Because a condominium is real property, the closing costs are higher than those for a co-op (see section entitled “Closing Costs”).

### **C. Cooperative Apartment**

In a co-op, the cooperative corporation owns the entire building which includes all individual apartments and common areas. The corporation issues shares of its stock allocated to each apartment based upon the size of the apartment. Each purchaser leases the apartment from the corporation under the terms of a proprietary lease (which is similar to a rental lease but much more detailed). The corporation usually has a commercial mortgage on the entire building called an “underlying mortgage” which is paid monthly by the shareholders. Each purchaser may also have a separate loan for the purchase of their apartment. The security for a co-op apartment loan is the shares of stock and proprietary lease which is held by the lender while the loan is still pending. The lender will require a Uniform Commercial Code Financing Statement (UCC-1) to be filed in the county where the apartment is located (in lieu of a mortgage) which places a lien on the shares and proprietary lease.

The purchaser will pay monthly maintenance charges which are comprised of the apartment owner's proportionate share of three expenses: (i) real estate taxes on the entire building; (ii) monthly payments on the underlying mortgage on the entire building; and (iii) general upkeep of the building, employee salaries, insurance, fuel, electricity, cleaning and management fees. Monthly maintenance charges in co-ops are usually higher than common charges in condo apartments. Since a co-op's maintenance is comprised of payments on the underlying mortgage and real estate taxes, a portion of the yearly maintenance qualifies for an income tax deduction for the shareholder. Finally, the transfer of ownership in a co-op apartment is subject to approval by the board of directors and the corporation may impose financing limitations on the amount a purchaser can borrow to purchase the apartment. The closing costs for a co-op are lower than that of a residential house or condo- minimum closing since a co-op is not considered "real property" (i.e. in a co-op the purchaser owns stock and a lease allocated to an apartment not real estate as in a house or a condo).

### **D. Condo**

A condo is a hybrid development primarily built in the 1970's and 1980's where there is both a condominium association and cooperative apartments. The entire building is a condominium with 2 or more units, one unit being the co-op corporation and the other units being the commercial units on the ground floor or basement (ex. retail stores or garage). The co-op is actually located within the condominium. The condo usually has a relaxed application and approval process and many do not even require an interview of the purchaser.

## IV The Parties



Before reviewing the steps to closing, it is important to know who the primary participants will be in the home buying process. As the purchaser proceeds through this Guide, he or she will learn more about what each person does and is responsible for.

**Appraiser** – a certified and qualified professional who evaluates a property and assigns a market value

**Attorney** – a licensed person who gives legal advice to clients representing them in connection with the real estate transaction

**Borrower (aka Mortgagor)** – a person who is borrowing money from a lender, usually the purchaser of a home

**Condominium Association** – a board of managers who run the day-to-day operations of the condominium

**Cooperative Corporation** – a corporation organized to own and operate a cooperative building

**Developer/Sponsor** – a person or entity that converts and develops a condominium or cooperative building

**Homeowner' Association** – similar to a condominium association, a board of managers who run the day-to-day operations of a home owner community

**Inspector/Engineer** – a person who examines the home for defects such as problems with the roof, electrical, plumbing, heating and cooling systems\*

**Insurance Agent** – a person who provides hazard insurance to protect the homeowner and lender against physical damage to a property

**Lender or Bank** – the institution that lends money to a purchaser and uses the home as security for repayment of the loan

**Loan Officer** – A person who works for a lending institution that secures a loan for a borrower

**Managing Agent** – a company or person who oversees to the day-to-day operation of cooperative corporations and condominium associations

**Mortgage Broker** – a licensed company or individual who obtains loans for purchasers

**Real Estate Broker** – a person or company licensed to represent sellers and/or buyers of real estate (a seller may have a different real estate broker than the buyer)

\*Inspections are generally not necessary for co-op and condominium apartments in New York City but each building is different. Please consult your attorney.



## V THE STEPS TO CLOSING



### A. Selecting a Real Estate Team

#### 1. The Real Estate Broker

The first step in purchasing a house or an apartment is to locate and work with an experienced real estate broker who is familiar with the area in which the purchaser wants to buy the home. It is very important that the purchaser feels comfortable with the real estate salesperson. The purchaser should be prepared to spend a significant amount of time with the real estate broker to travel and look at numerous homes or apartments for sale. The purchaser must outline what area he or she wants to live in and how much he or she wants to pay as specifically as possible as well as what type of house or apartment, and how many rooms are needed.

Real estate brokers navigate the legal and financial intricacies of buying a home. A real estate broker must deal with clients honestly and fairly and is required to describe all facts which are known that affect the value or desirability of the property. A good real estate broker can help a purchaser define and clarify home ownership priorities and how much a purchaser can afford, facilitate the negotiation process of offers and counteroffers, help estimate qualifications for a loan, and assist with financial and legal aspects of the closing. A real estate broker should advise if the purchase price is negotiable, how long the premises has been on the market, if there are any problems in the neighborhood, and if purchasing a condo or a co-op, if the building is financially stable and in good condition. Remember, the more amenities in a residence or co-op, the more the purchaser will pay for the apartment (for example, doormen, concierge, garage, health club, sunlight, patio, balcony, etc. will all come at a premium). A real estate broker should be prepared to disclose in the purchase of a house or condo what the real estate taxes are, in a condo or co-op what the common charges or maintenance is, and in a co-op what portion of the maintenance is tax deductible. The real estate broker's commission is usually paid by the seller and it is usually six percent of the agreed upon sales price.

A real estate broker is a person licensed to carry out real estate transactions and receive a fee for these activities. Real estate agents are also trained and licensed to conduct real estate transactions but they must

operate under the supervision of a real estate broker. A purchaser must understand the relationship with his or her broker or agent. A broker or agent can work for the seller, buyer or both. A seller's broker or agent has undivided loyalty and pledges confidentiality to the seller. A buyer's broker or agent has undivided loyalty and pledges confidentiality to the buyer. A dual agent or broker representing both buyer and seller is prohibited from revealing to the seller and buyer any confidential information obtained from the other party. A dual agent can only be the agent for both parties with the written consent of both the buyer and seller. As a note, Federal and State laws make it unlawful to discriminate on the basis of race, color, religion, sex, national origins, handicap or family status in real estate transactions.

## **2. The Real Estate Attorney**

New York State has complicated, if not the most complex real estate laws in the country. A purchaser should locate and use the services of an experienced real estate lawyer licensed in New York. The lawyer should initially perform a "due diligence" review of the underlying documents effecting the premises to determine, prior to signing a contract, whether there are any problems or issues that need to be addressed. For a residential house, the lawyer should review the seller's title policy that was issued when the seller purchased the property, the deed, the survey, the documents recorded against the premises such as easements, covenants and restrictions and the certificate of occupancy. For a condo, the lawyer should review the offering plan and all amendments, the seller's title policy, the declaration, the house rules of the condominium, the by-laws, and at least, the two last years of financial statements of the condo. For a co-op, the lawyer should review the same documents as set forth above for a condo, as well as the proprietary lease. In addition, the attorney should review the corporate minutes of the cooperative at the managing agent's office. The review of the minutes will provide insight into any current problems in the building and major expenses to be incurred by the co-op corporation or condo and its owners. For both a condo and co-op, it is imperative for the lawyer to carefully review the building's financial statements to make a determination if there have been, are, or will be financial problems in the building which may have an adverse effect on the purchaser in the future.

Once a bid has been accepted by the seller, the seller's attorney will prepare a draft of the contract of sale and provide the contract to the purchaser's lawyer. The lawyer will review and negotiate the terms of the contract of sale that best represents the purchaser's interests. If requested, the lawyer will meet with the purchaser to explain the rights and obligations under the contract and provide an estimate of the closing costs in connection with the purchase. The attorney will work with the purchaser's mortgage company to obtain the written loan commitment, review the terms of the commitment and work with the purchaser to clear any open conditions or requirements in the commitment. The lawyer will order and review a title report if purchasing a house or condo, and a lien search if purchasing a co-op, to insure that the seller has good title to the premises and insure that all outstanding liens are removed or satisfied at or prior to closing. The lawyer will schedule the closing, work with the lender's attorney to be sure that all open issues have been resolved, advise the purchaser of the final closing costs, attend the closing, and review and explain the closing and loan documents. Finally, the attorney will prepare a closing statement summarizing the transaction and closing costs and will provide the purchaser with copies of all closing and loan documents after the closing.

The purchaser's lawyer should be available to the purchaser either by telephone, e-mail or in person to answer any questions and to advise of the status of any pending matters during the purchase process. Attorneys who are sole practitioners may not be available all the time and may not have as much experience as an attorney where the practice is devoted solely to real estate law. Choose an attorney who is thoroughly experienced in representing purchasers of residential houses, especially condos or co-ops, prior to making a bid on an apartment. It may take several days to retain a lawyer and the purchaser will want to have one available when a bid has been accepted. The purchaser should not hesitate to ask an attorney to discuss his or her past experience or credentials or ask the attorney for several references. The purchase of a home will most likely represent the largest investment a purchaser will ever make and only a knowledgeable, accessible and thorough attorney will help minimize any risks inherent in such a transaction. A seasoned real estate lawyer should try to make the deal work ("negotiate, do not litigate"). A purchaser should not look to the lawyer to advise if the purchase is a "good deal".

### **3. The Loan Officer/Mortgage Broker**

When seeking a loan, a purchaser will either work with a loan officer or mortgage broker. Loan officers generally place loans with the company they work for. Mortgage brokers negotiate, originate and process residential real estate loans on behalf of the borrower with a third party lender. A mortgage broker does not lend money to a prospective purchaser. It will arrange for a loan from an institutional lender or savings and loan bank on behalf of the purchaser. Mortgage brokers are regulated by the New York State Banking Department. There are significant differences between working with a loan officer versus working with a mortgage broker:

1. Both a loan officer and a mortgage broker will meet with the purchaser personally, analyze the purchaser's financial situation and navigate the purchaser's loan from beginning to end.
2. A mortgage broker has relationships with numerous lenders and can negotiate the best rate and product that best suits the purchaser's financial situation while a loan officer can generally only work with the direct lender.
3. A mortgage broker may be able to have the lender make an exception in a particular situation where the lender would not generally make the loan.
4. Neither the loan officer nor mortgage broker will charge any fees to secure the loan. The mortgage broker will receive its fee from the lender directly based upon the amount of loan placed with the lender.
5. Some loan products may only be available through a mortgage broker.
6. Both a loan officer and a mortgage broker will pre-qualify the purchaser as to the amount the purchaser can afford to borrow and will calculate the amount of the purchaser's monthly installment.
7. Sometimes a mortgage broker may be able to process and package the purchaser's loan quicker and more efficiently than a loan officer.
9. A mortgage broker can simultaneously submit a loan application to several lenders with only one application and appraisal fee.

Note: In 2007 and 2008, many lenders were found to have made loans in ways which did not meet certain standards. These "sub-prime loans" was a type of loan that was granted to borrowers with an insufficient credit history. When the recession of 2008 arrived, many borrowers were forced into foreclosure and/or bankruptcy putting a tremendous financial burden on the lenders. Lenders have now become very cautious of loans generated by mortgage brokers and numerous banks at the time this Guide was written have terminated their arrangements to place loans through mortgage brokers.

## **B. Shopping for a Mortgage**

Most purchasers cannot, and do not want to, put up all of the cash they have for the cost of a home. Purchasers generally borrow a large part of the purchase price by obtaining a loan. While the purchaser will not actually apply for a loan prior to signing a contract, it is advisable, before the purchaser arrives on the agreed upon contract terms, to contact a mortgage broker or lender. By the time the contracts are fully signed, the purchaser should have selected a mortgage broker or lender, completed a loan application, assembled the documentation requested and be prepared to submit the loan package. The loan application process takes up the largest block of time, aside from finding a home.

### **1. The Differences Between a Mortgage and Co-op Loan**

For residential houses and condominium apartments, a purchaser would obtain a "mortgage" and for a cooperative apartment, a purchaser would obtain a "co-op loan." The difference is subtle, since ownership of a co-op apartment consists of a stock certificate and proprietary lease, the lender cannot offer a mortgage on the apartment since it is not considered real property. The bottom line is the same for a mortgage and a co-op loan – if the purchaser fails to repay the loan, the lender will have the right to foreclose on the home, take it away from the purchaser and sell the home to a third party. For both a mortgage loan and a co-op loan, the purchaser will sign a promissory note which is an agreement to repay the loan to the lender. The loan amount is called "principal." The note will reflect the detailed terms and conditions of the loan and how it will be repaid (ex. the amount of the monthly payment, when and where payments are to be made, when the loan matures, and the number of payments, among other important provisions). The actual mortgage is a separate document signed by a purchaser at the closing which

pledges the residential house or condominium apartment as security for the loan. The mortgage is recorded in the county clerk's office or register's office where the property is located. A co-op apartment purchaser does not sign a mortgage – he or she will sign a document called a “security agreement.” The security agreement is not recorded in the clerk's or register's office, but it also gives the lender the right to foreclose on the apartment in the event the purchaser fails to repay the loan. With a co-op loan, the purchaser signs a UCC-1 financing statement which is filed in the clerk's office or register's office.

## **2. Financing Options and Loan Products**

There are various options and loan products available for specific loans – the options and types of loans are continuously modified. A purchaser should determine what options and conditions are available at the time of his or her purchase. Most mortgage payments are divided into two parts: principal and interest. The principal is the amount a purchaser returns to the lender for the actual dollars borrowed. The interest is a fee, calculated in percentage points and charged by the lender for lending the money. The combined principal and interest is frequently called “P&I”. Because the principal is based on the amount that is actually borrowed, it remains fixed for the entire life of the loan but is reduced proportionally with each payment. A purchaser never pays back more principal than initially borrowed. A few options a purchaser may encounter are listed below:

**a. Fixed Rate Loan** – the interest rate is set on or before the closing and stays the same over the life of the loan. These loans are generally selected by purchasers who have a long time horizon, anticipating residing at the premises for more than ten years. If interest rates go down, a home- owner can always refinance the loan with a lower fixed or adjustable rate loan. Over the term of the loan, the purchaser pays interest and gradually reduces the outstanding principal each month. During the early years of the loan, most of the monthly payment is applied toward interest with very little towards principal. In the later years, most of the monthly payment is applied toward principal and very little toward interest. At maturity, the loan self liquidates and is paid in full. This payment method is called “amortization” (see definition under the section entitled “The Language of Loans”)

**b. Adjustable Rate Loan** – The adjustable rate loan (commonly referred to as “ARM” -adjustable rate mortgage) has interest rates that change as national interest rates move up or down after a selected period of time. Generally, ARM loans can be for periods of one month, six months, one year, three years, seven years or ten years. It can work to a purchaser's advantage if interest rates go down and to a disadvantage if they go up. Accordingly, an adjustable rate loan is a riskier choice for a purchaser. While the initial interest rate may be lower than the rate offered for a fixed rate loan, when the rate changes, it can result in a higher payment at a later date. The adjustable rate loan may be useful if the purchaser will be selling the home in a few years.

Many adjustable rate loans have caps that limit how much the interest rate or loan payments can increase. There may also be a lifetime cap which limits the maximum amount the interest on the loan can go up over the lifetime of the loan. Loans with an adjustable rate include a provision for the adjustment period. This is the length of time between interest rate charges. For example, a five year ARM loan means the interest rate is fixed for five years and then changes each anniversary thereafter.

**c. Interest Only Loan** – During all or a portion of the loan term, the purchaser will pay interest only. At maturity, the entire original principal amount is due and payable to the lender. Most loans are “amortized” so that when a purchaser makes a monthly payment, a portion of the payment is applied to interest and a portion is applied to the original loan amount. When a loan is fully amortized at maturity, the loan will be paid in full. Interest only loans will have lower monthly payments than amortized loans but since no portion of the payment is applied to the original loan amount, no equity is accumulated on the home. Interest only loans are only available with adjustable rate provisions. Under this type of loan, a purchaser can, if so desired, pay principal along with the interest payments (and in such event, the interest payment going forward is reduced because the principal has been reduced).

## **3. Prepayment Penalty**

A loan with a prepayment penalty requires the purchaser to pay a fee to the lender if the loan is paid in full or in part before the maturity date. While this “penalty” is not seen very often, it is advisable to confirm if such a fee exists when securing the loan.

#### **4. Negative Amortization**

Some lenders offer a loan repayment plan called “negative amortization” which allows a purchaser to pay less than the normal principal and interest payment. In many cases, the minimum payment is not sufficient to cover the interest for the monthly payment period. In this case, the principal grows larger as opposed to smaller as in the case of amortized loans. These loans could be beneficial to certain purchasers under certain circumstances and a purchaser should consider the ramifications of such a loan.

#### **5. Private Mortgage Insurance**

Traditionally, a purchaser can borrow in excess of 80% of the value of the home provided the purchaser secures “private mortgage insurance” (PMI). Mortgage insurance protects the lender in case the purchaser fails to pay the loan – it is a separate type of insurance benefiting the lender, not the purchaser, and it does not take the place of life or hazard insurance. The cost of the private mortgage insurance is added to the purchaser’s monthly mortgage payments and closing costs. Because PMI is not tax deductible and offers no benefit to the purchaser, many purchasers elect to obtain a second loan or “piggy back” loan as described in the next paragraph.

#### **6. Second Loans/Home Equity Line of Credit**

There is another option for those who do not have 20% of the purchase price: The purchaser may be able to obtain a second loan or home equity line of credit loan (frequently called a “HELOC” or a “piggy back” loan). These loans allow the purchaser to obtain a loan in excess of 80% of the purchase price without private mortgage insurance. The purchaser may be able to qualify for a second loan for 1% to 15% of the purchase price. The HELOC or piggyback loan will have a full set of loan documents with different terms than the primary loan. The interest rate is usually tied to the Prime Rate. Co-op caveat – It is important to note that most co-ops will not allow a purchaser to secure a loan in excess of 80% of the purchase price.

#### **7. The Language of Loans**

There are all types of financing arrangements available to a purchaser when seeking a loan. The purchaser’s loan officer/mortgage broker and attorney can be helpful in providing the purchaser with information on what is currently available from lenders. Whatever type of loan the purchaser selects, he or she should know the specific terms and limitations required by the lender with respect to the following:

**a. The Term** – A loan is written for a specific period of time called the “term.” A term is typically 30 years but it can be less or more. Lenders have made loans with terms as short as one (1) year and as long as forty (40) years. The term of the loan will impact the amount of money needed for monthly payments and the amount of money required to pay off the mortgage. If payments include P&I, the shorter the term, the less interest is paid to the lender over the life of the loan, however a shorter term requires larger monthly payments.

**b. Rate Lock-In** – A rate lock is in agreement with the lender which guarantees the purchaser a specific interest rate provided that the loan is closed within a set period of time. Rate lock periods customarily extend for sixty (60) days and may require a deposit to be made (the deposit is usually refunded to the borrower at closing). Longer lock periods may be obtained at a fee to the purchaser. The longer the lock in period, the higher the interest rate. Purchasers should use caution when locking a rate particularly with co-ops. Since purchasers must obtain co-op board approval before closing, if there are delays in obtaining such approval, a purchaser may lose the locked interest rate. Also, many purchasers are unaware that all sellers (as well as purchasers) are entitled to a reasonable period of time to postpone the closing if they are not ready to close. This period can be as long as thirty days beyond the closing date set forth on the contract of sale. Accordingly, a purchaser should be careful when locking in a rate and confer with his or her attorney before doing so.

**c. Points** – Occasionally, a purchaser must pay a fee for obtaining the loan, called points. A point is one percent of the loan amount. (For example, two points on a \$100,000 loan is \$2,000). Points may be charged as an “origination fee” or as a “discount point.” Origination points are the fees normally charged by a lender or mortgage broker for originating the loan. Discount points are charged to lower the interest rate and your payments – by paying a bit more money up front, the lender lets the purchaser payless over time. When shopping for a loan, a purchaser should evaluate the combination of interest rates and points.

Remember, points represent a one-time charge for the loan whereas interest is paid for the entire life of the loan. If it is possible to pay a little more in points at the time of closing, the purchaser maybe able to reduce interest payments that are made for up to thirty (30) years. This can be a substantial savings to the purchaser. (For example, if a purchaser pays no points, the interest rate may be 6%, but if the purchaser pays two points [\$2,000], the interest rate may be 5.50%). When a purchaser pays points to lower the rate, the rule of thumb is that it will take a purchaser about five years to make up each point paid and after that, savings will start to kick in for the life of the loan.

**d. Annual Percentage Rate (APR)** – When a lender makes a loan, the lender will inform the purchaser of the annual percentage rate (APR). The APR includes certain closing costs as well as any points, amortizes them over the life of the loan, and comes up with a “true” cost of borrowing as specified by the banking department. The APR makes it easy to compare – apples-to-apples – one mortgage to another. It can be a useful tool in evaluating a loan but should not be the sole factor in making a purchaser’s financing decision. The APR was developed under federal law to disclose to loan applicants the actual amount of interest that will e paid out on a given loan, over the life of that loan. Points should be considered interest that a purchaser pays up front and therefore, are figured into the cost of the purchaser’s loan repayment. For example, if a purchaser takes out a loan for \$500,000 at seven percent interest for 30 years and the purchaser pays one origination point and one discount point, the purchaser is paying a total of two points, or \$10,000. The monthly payment on a \$500,000 loan will be \$3,326.51. To figure out the APR on a loan, you have to subtract the \$10,000 from the starting loan balance (\$500,000 – \$10,000) since the purchaser will be paying the \$10,000 at closing. This makes the purchaser’s net loan proceeds \$490,000. Based on a \$490,000 loan amount – that interest rate (the APR) would be 7.2%, slightly higher than the purchaser’s actual rate.

**e. Amortization and Equity** – Most loans require the purchaser to make uniform monthly payments of principal and interest. Every time a purchaser makes a loan payment, a portion of the payment is applied to principal and reduces the debt. The process of reducing the principal is known as “amortization.” When the principal is paid off, the loan has been fully amortized. A purchaser can track payments and the diminishing debt on an amortization schedule – a timetable that shows how each payment is applied to principal and interest and the remaining balance on the loan (for example, if the loan is \$250,000 and has a fixed interest rate of six percent payable over 30 years, the monthly payment will be approximately \$1,200.00. At the very beginning of the loan, approximately \$1,000.00 is applied to interest and \$200.00 is applied to reducing principal. After 15 years, \$713.00 is applied to interest and \$487.00 is applied to principal. At the end of the loan, \$12.00 is applied to interest and \$1,188.00 is applied to principal). When a purchaser pays principal of the loan to the lender, the purchaser builds equity, and the personal investment in the home increases. Equity is the homeowner’s share in the value of the home – it is the difference between the fair market value of the home and the current amount that the purchaser owes on the property. As a purchaser pays down the loan, the equity in the home increases (for example, if the home is valued at \$250,000 and you owe \$200,000 on the mortgage, there is \$50,000 equity in the home. If the loan is reduced to \$100,000, the equity increases to \$150,000.)

**f. Insurance** – Every owner of a residential house must maintain hazard insurance. A purchaser should find out what requirements the lender requires to maintain homeowner’s insurance on the property.

**g. Escrows** – Many lenders require purchasers to deposit monies with the lender to pay real estate taxes and homeowners insurance. A purchaser should inquire what provisions the lender requires for real estate tax and insurance escrow payments and buffers.

**h. Secondary Financing** – A purchaser should inquire if there are limitations on the purchaser’s right to borrow from another source or to borrow additional money with a second or home equity loan either at the closing or at a later date.

**i. Primary Occupancy** – A purchaser should inquire if there are limitations on the use of the property as a primary or secondary residence or for investment purposes.

**j. Closing Costs** – A purchaser should inquire what the lender’s closing costs are including service charges, application fees, appraisal fees, lender’s attorney fees and points (see section entitled “Closing Costs”).

## **8. Loan Approval Process**

A lender’s decision to make a loan to a purchaser is usually based upon the following factors: credit rating, income, assets and liabilities, amount of the loan, and the appraised value of the premises. To verify this information, the lender will require the purchaser to complete a loan application setting forth the purchaser’s assets and liabilities, will confirm the purchaser’s employment and income, will request a credit report from a credit reporting agency and will have the premises appraised. The appraisal is an unbiased estimate of the value of the premises that is being purchased. The appraisal insures the bank that it is not lending more money than what the premises are worth. The loan application and appraisal are then submitted to the bank’s “underwriting department” which reviews the information and makes a decision to approve or deny the purchaser’s request for a loan. The loan approval process takes approximately two to six weeks and upon approval, the lender issues a commitment letter. A commitment letter is the lender’s written agreement to lend the purchaser money to buy the premises. The commitment letter usually contains the conditions that the purchaser must satisfy before the loan will be finalized (e.g. review and approval of the title report by the lender’s attorney). It is a good idea to contact your mortgage processor approximately once a week with a request for a status report of the loan approval.

Most loans are 80% or less of the purchase price. However, some lenders will agree to lend up to 90% of the purchase price for co-ops and 95% for condos or houses in certain situations. Please note that many co-ops will set limitations on the amount a purchaser may finance with a mortgage on the co-op shares. If the purchaser is obtaining a loan to purchase the premises, the contract of sale should contain a “finance contingency” clause. This provides that in the event the purchaser is unable to obtain a written loan commitment, he or she has the right to cancel the contract and receive a refund of the down payment. Once issued, the purchaser should provide a copy of the written commitment to the purchaser’s attorney for review before it is signed. If the terms of the commitment are satisfactory, the purchaser will sign it and return it to the mortgage broker or lender.

In some instances, the commitment may have special conditions listed in it that the purchaser must satisfy before a closing can be scheduled. (e.g. explaining a late payment on a credit card). The purchaser should work with the purchaser’s attorney and mortgage broker or lender to satisfy these conditions.

A special note about condos and co-ops: A lender may also look at the financial condition of the building as well as the purchaser’s loan application before approving a loan. Accordingly, it is usually a good idea for the mortgage broker or lender review the last two years of financial statements to insure that the building meets the lender’s requirements.

A special note about financing contingencies: Many transactions are not conditioned upon the purchaser obtaining a loan. If a purchaser agrees to buy a home without a financing contingency and the purchaser needs a loan, this can be a tremendous risk to the purchaser. If the purchaser fails to obtain a loan, the purchaser will need to obtain alternative financing or he or she may lose his or her down payment. If a purchaser waives the financing contingency, the purchaser must discuss the ramifications with his or her attorney.

## 9. Loan Guidelines

Anyone who qualifies under the lender's underwriting guidelines can obtain a loan. The guidelines must be administered fairly and equally to all purchasers. Lenders are required to comply with the following procedures and regulations when taking loan applications:

**a. The Equal Credit Opportunity Act (ECOA)** – prohibits discrimination in lending. If a loan application is rejected, this act requires the lender to send the applicant a written explanation stating the reasons for such rejection.

**b. The Fair Credit Reporting Act** – guarantees access to the credit report. If the purchaser is turned down for credit reasons, the purchaser is entitled to receive a copy of the credit history.

**c. The Real Estate Settlement Procedures Act** – (RESPA) requires lenders to give good faith estimates of all closing costs and a truth in lending disclosure statement. The lender will not know the exact closing costs when a loan application is submitted but the purchaser will be able to estimate these costs with the help of the loan officer, mortgage broker or loan officer and the purchaser's attorney. The truth in lending disclosure statement is a federal regulation which requires lenders to inform purchasers of the annual percentage rate on the loan allowing purchasers to compare the relative value of different loans.

## C. The Purchase Process and Timing

The purchase process is a complex series of events which, without the right professionals, can be filled with aggravation and anxiety. It is recommended that a purchaser consult and work with an experienced realtor, attorney, mortgage broker, loan officer, and accountant in negotiating and concluding the transaction. It is difficult to estimate how long the process from acceptance of the bid to purchase the premises to closing will take. There are many variables which can have an impact on the actual closing date.

Under the assumption that both parties are anxious to close and the transaction is financed, a residential house or condo closing can take approximately four to ten weeks. A co-op closing can take eight to twelve weeks because of the fact that a co-op board interview is usually required. As discussed, in house and condo closings, there is normally one condition to satisfy: obtaining a written loan commitment. In a co-op closing, there are usually two conditions to satisfy: obtaining a written loan commitment and the approval of the sale by the co-op board. Since a co-op board usually meets once a month to interview and approve prospective purchasers, the closing date is dependent upon when the co-op board meets for this purpose.

The largest block of time in the closing process is devoted to obtaining a written loan commitment. If the purchase is not conditioned upon financing, the closing can occur much sooner. Keep in mind that there are numerous other factors that can impact upon the timing of a closing, such as the need to sell an existing house or apartment; when the loan commitment or interest rate lock in expires; a desire to wait until the end of the month to reduce closing costs; or the desire to wait until the end of a school year, etc.

## D. Types of Home Ownership

There are several ways in which a purchaser can take title to a home. It is important for the purchaser to discuss these types of ownership with his or her attorney so that ownership is set upon in the most advantageous way.

**1. Sole Ownership** - ownership by one person.

**2. Joint Tenancy with Right of Survivorship** - When 2 or more persons own an equal undivided interest in the home. During their lifetime, any one of the owners may sell their interest to whomever they choose. If one owner dies, the surviving owner or owners automatically get the deceased owner's share in the home regardless of the decedent's will.

**3. Tenancy by the Entirety** - This type of co-ownership is available only to a husband and wife. Both



must agree before the house can be sold. When one spouse dies, the home goes to the surviving spouse automatically regardless of the decedent's will.

**4. Tenancy in Common** - This is a type of co-ownership without right of survivorship. The property is owned jointly but if one owner dies, the deceased owner's share goes to his or her heirs rather than to the surviving owner or owners. Each owner is a separate and distinct owner and his or her interest can be allocated among the owners (ex. 75% for one and 25% for the other)

## **E. Offer and Acceptance**

When a purchaser decides on the home he or she wants to buy, the purchaser is ready to submit an offer to purchase. Before a purchaser makes an offer, the purchaser needs to decide whether he or she will offer the asking price or offer a lower price for a home. Generally, if a purchaser offers the full asking price of the home, the process ends and the seller will instruct his or her attorney to prepare contracts for signature. A purchaser may offer the full price of the home if (i) the home is inaccurately or under priced; (ii) the home is just what the purchaser is looking for and there are few other homes on the market that meet the purchaser's needs; (iii) the owner does not appear to be under any pressure to sell quickly; (iv) the home had just come on the market and similar homes sell quickly; (v) the purchaser has inspected the home thoroughly and there are no indications of problems; or (vi) there is serious interest from other purchasers.

In most cases, home sales include a process of offers and counteroffers. If a purchaser does not offer the full asking price for the home, the purchaser can expect to go back and forth with the seller to come to a price that is acceptable to both parties. The real estate broker will serve as the go-between. The real estate agent will assist the purchaser and advise of other offers, how long the house or apartment has been on the market and whether the counter-offer is realistic. If there is no real estate broker, the purchaser and seller will need to communicate with each other directly to come to an agreed upon price. Try to determine if the seller is under pressure to sell the premises.

Please note, however, that the purchase price is not the only consideration in the offer to purchase a new home. Be sure the seller agrees on the proposed closing date, the items included in the sale (appliances, window treatments, light fixtures, etc.), the loan amount, if any, and the length of time it will take to obtain a loan. If purchasing a co-op, determine the maximum amount of money the corporation will allow the purchaser to borrow, if applicable. Remember, until parties sign a contract, there is no deal and once a contract is signed, it cannot be changed without the written consent of both parties.

## **F. Contingencies**

An offer and counteroffer may contain contingencies. Contingencies are special provisions that require something to happen before the purchaser is legally obligated to buy the home. The seller can also stipulate contingencies (for example, sellers might specify that the sale is contingent upon the seller's purchase of another home). Contingency clauses give the purchaser or the seller a way out of the contract if something does not happen.

**a. Financing Contingency** – A financing contingency clause in the contract releases the purchaser from the contract if the purchaser is unable to get a loan. The contingency clause describes the terms of the loan the purchaser wishes to obtain including the length and amount of the loan (generally, the interest rate is not included as a contingency). The purchaser must act in good faith and make every effort to obtain the loan within a certain time period (usually 30 to 45 days). The seller will want the shortest period of time and the purchaser will want the longest period of time to secure the loan. If the purchaser does not receive a written loan commitment pursuant to the contingency clause in the contract, the purchaser or the seller has the right to terminate the contract and receive a refund of the down payment.

**b. Inspections** – Most residential house contracts are not contingent upon an engineer inspection of the home. A seller will usually want the purchaser to conduct the engineer inspection prior to signing a contract. The rationale is that the seller does not want the contract to be canceled if the purchaser is not satisfied with the results of the report. If the purchaser cancels the contract, the contract will terminate, the

down payment will be refunded to the purchaser and the seller will have to start the sale process again with another purchaser. If the inspection is performed before the contract is signed, and the report reflects unacceptable conditions at the home, the purchaser maybe able to negotiate with the seller to repair any defects prior to closing or try to obtain a reduction in the purchase price. If the purchaser signs the contract of sale and then has the inspection and the results are not to the purchaser's liking, the purchaser may have accrued legal fees for the negotiation of the contract and any due diligence review of the premises or the building. In addition, disputes can sometimes arise between the seller and the purchaser as to what is satisfactory and whether the contract can be cancelled entitling the purchaser to a refund of the down payment. There are circumstances however where it makes sense to sign the contract with an inspection contingency (e.g. where others bidding on the premises may sign a contract prior to completion of the purchaser's inspection).

(i) An engineer inspection is absolutely necessary for a residential house but may not be necessary for a condo or co-op apartment. The engineer will spend several hours inspecting the interior and exterior of the house or apartment as well as its major systems and will provide you with a detailed written statement of the condition of the property. If a purchaser is unable to make a determination about heating, plumbing, electrical systems, appliances, the roof, etc., it is wise to hire an engineer.

If the purchaser decides to hire an engineer, it is important to be present during the inspection since the engineer can point out problems the engineer may find. Since the purchaser will be spending thousands of dollars on a house or an apartment and it is most likely the largest single purchase a purchaser will make, it maybe a good idea to invest \$500 to \$1,000 in an engineer inspection. A contract of sale usually contains a clause that states that the purchaser is buying the premises in "as is" condition. This means that the purchaser cannot hold the seller responsible for anything that did not work or was broken at the time the contract was signed and later discovered prior to closing. An inspection of a house should be performed by a reliable engineer. The purchaser's attorney should be able to recommend an inspection company. If the house contains a fuel tank for heating or a septic tank, additional inspections should be made.

In 2003, a new law was passed in New York requiring a seller of a one family to four family house to disclose any known defects or problems in a residential house (the law at the time of writing this Guide does not apply to co-op or condominium apartments.) The disclosure must be attached to the contract of sale. In lieu of the seller providing the disclosure, the seller must give a \$500 credit to the purchaser at closing. Note: Sellers of newly built homes are exempt from providing the \$500 credit but purchasers should make sure that they receive a warranty for the new home.

Purchasers of condo or co-op apartments generally waive the inspection based upon the theory that the condominium or co-op corporation, and not the owner, is responsible for the repair of any structural, electrical, heating or plumbing problems the apartment may have. However, be wary that the cost of a major repair to the structure of a building or a building's operating systems can be more substantial to a unit owner in a small condo or co-op building.

The proprietary lease for a co-op apartment and the condominium declaration for a condo apartment usually govern who is responsible for making repairs (plumbing and electrical repairs inside the apartment are usually the apartment owner's responsibility). Also, non-structural repairs can be expensive and an engineer can advise as to the condition of the air-conditioners, floors, leaks in the walls and other matters. Even if there are structural problems or repairs required to a major operating system, remember all condo or co-op owners are ultimately paying for at least part of the repair cost by way of the monthly common charges or maintenance. Despite the fact that a building may be new or recently built, it may have been poorly designed or constructed or improperly maintained.

(ii) Termite, Soil, Water, Fuel Tank, Septic Tank, Radon, Mold, Asbestos, Fireplace, Rodent and Bed Bug Tests – If the transaction is the purchase of a residential house, certain tests may not be completed prior to signing the contract. Frequently, the contract is conditioned upon satisfactory results of these tests. The purchaser is usually given one to two weeks to complete these additional tests after the contract is fully signed. The cost of these fees may not be included in the engineer's fee. If the tests reflect unsatisfactory

conditions, the seller is usually given the option of treating and correcting the condition prior to closing with proof of same. If the seller does not treat these conditions, the purchaser will have the option of canceling the contract and the down payment will be refunded to the purchaser.

(iii) Lead-Based Paint—Interior walls in homes and apartments built prior to 1978 may have been painted with lead-based paint. Laws were passed that require the seller to disclose any knowledge of lead-based paint. It is widely known that ingesting lead-based paint may cause brain damage. Small children residing in the home may accidentally eat paint chips. While the existence of lead-based paint exists in older homes, most purchasers choose to proceed with the transaction because they will maintain the paint and prevent children, if any, from eating the paint.

**c. Marketable Title** – Every contract is generally conditioned upon the seller delivering “marketable title” to the home to the purchaser at closing. Marketable title is title to the home without any issues that will impact on a resale. Usually, the seller must transfer a home without any open mortgages, co-op loans, real estate taxes, maintenance charges, common charges, liens or judgments, where applicable. Generally, there must be a valid certificate of occupancy and no open violations when there is a sale of a condominium apartment or residential house. Furthermore, the transfer of a residential house is conditioned upon receipt by the purchaser of a survey confirming the boundaries of the land and compliance with zoning ordinances which include among other things that a house be “set back” a certain distance from the edge of the property line. A Purchaser should rely on his or her attorney to make sure that title is marketable.

**d. Co-op Board Approval/Waiver of Right of First Referral** (Co-ops and Condos) – The sale of a cooperative apartment is contingent upon the purchaser being interviewed and approved by the board of directors of the apartment corporation. The purchaser must timely complete and submit his or her board application (such time periods will be set forth in the contract) and the purchaser must act in good faith to obtain the board approval. If the board rejects the purchaser, the contract will be canceled and the down payment will be refunded to the purchaser. The sale of the condominium apartment is contingent upon the Condominium Association issuing a document called the “Waiver of Right of First Refusal.” Most condominiums have a right to purchase the apartment when the seller has entered into a contract of sale. Rarely, a condominium will exercise this “right of first refusal” and purchase the apartment effectively canceling the seller’s contract with the purchaser. In most instances, however, the condominium will not purchase the apartment and will issue a short letter waiving its right to purchase. This waiver must be presented at closing for the transaction to be completed.

## **G. Title Insurance/Lien Search**

Title insurance is generally required for purchases of residential homes and condominium apartments. This insurance protects the purchaser (and the lender, if there is financing) against loss arising from disputes over ownership of the property. The title insurance company, selected by the purchaser’s attorney, will prepare a title report which summarizes all problems or issues affecting the premises. The report will disclose the owner of the property what mortgages or liens are filed against the property, what the actual real estate taxes are and if they have been paid, if there are any judgments or liens against the seller, a description of the property, a copy of the certificate of occupancy, whether there are any violations filed against the property, and a copy of the survey (See Section VI.A. page \_\_\_\_). The title report is an examination of the public records to disclose the previous owners of record, prior deeds, prior mortgages, judgments, probate proceedings and divorces, foreclosures, tax and construction liens and other matters which can affect title to the premises. The title report will also disclose any error in the public records which may need to be corrected.

Based upon this search, the title company certifies to the purchaser that the seller truly owns the property, has full authority to sell it and that no one else has claimed any interest in it. After the closing, the title company will issue a title policy assuring the purchaser that the property has “marketable title.” The title policy is an agreement that the title company will defend the purchaser’s title in court and pay all losses involved in any claim covered by the policy’s terms including the cost of legal fees. At closing, the purchaser will pay a one-time premium for title insurance which protection continues in effect as long as the purchaser owns the property. (See Section Entitled “Closing Costs”).

In a Co-op the purchaser's attorney will order a lien search in lieu of a title report. The search will determine if there are any liens or judgments against the seller and the co-op corporation (see page 21).

## VI CLOSING COSTS



The following is a comprehensive explanation of closing costs and expenses a purchaser can expect to pay in connection with the purchase of a home. There are significant differences in the closing costs between a residential home, condo or co-op apartment. In addition, many closing costs are incurred when purchasers borrow money from a lender. For those who are purchasing a one family home, the word "House" will appear in parenthesis next to the cost. If purchasing a condo apartment, the word "Condo" will appear in parenthesis next to the cost. If the purchaser is buying a co-op apartment, the word "Co-op" will appear in parenthesis next to the cost. Finally, if financing the purchase of the home, the word "Loan" will appear in parenthesis next to the cost.

### **A. Costs Payable Prior to Closing**

The following are costs payable by the purchaser prior to closing:

**Lender Application Fee (Loan)** – There is usually a fee paid to the mortgage broker or lender ranging between \$600 to \$1,000 to cover the cost of an appraisal (based on the purchase price of the premises), processing fees and a credit report.

**Engineer/Inspection Fee (House)** – An engineer's report can range in price from \$500 to \$1,000. There are usually additional fees if a termite, radon, fuel tank, septic tank, well water and lead-based paint test are needed.

**Survey/Survey Inspection (House)** – A survey is a drawing of the property by a licensed surveyor. It is a footprint of the premises showing the property lines and locations of structures and easements (like gas, telephone or electrical lines and poles). It will also show if any other property is encroaching on the premises or if there is access to the premises from a private street. If the seller of the residential house does not have an existing survey or a survey that is acceptable to the purchaser's lender, the purchaser may need to have a new survey prepared. The cost for a new survey ranges between \$500 and \$1,000 depending upon the size and number of structures on the property. If there is an existing survey for the property that is acceptable to the purchaser's attorney (and the lender's attorney, if the transaction is financed), only a "survey inspection" will be required. A survey inspection is a visual inspection performed by the title company compared against the existing survey. Any changes to the land or property are then set forth in the title report. The cost of the survey inspection is between \$50.00 and \$100.00 and is paid by the

purchaser to the title company at closing.

**Managing Agent Application Fee (Condo, Co-op)** – Many managing agents for condos and co-ops impose an application fee on prospective purchasers for processing the application and costs for a credit report. The fee usually ranges between \$500 and \$750.

**Homeowner’s Insurance (House Loan)** – The purchaser will usually be required to pay for a full year of homeowner’s insurance prior to closing and show evidence of same at the closing to the lender or its counsel. The amount of insurance must be acceptable to the lender of such insurance by providing a paid receipt (typically, the face amount of the mortgage or a 100% guaranteed replacement value policy). Even if there is no financing, it is always wise to secure homeowner’s insurance.

## **B. Costs Payable at Closing**

The following costs are payable at closing:

**Title Insurance (House, Condo)** – A purchaser will have to pay a one time premium for title insurance which protects both the purchaser and lender against a defect in the chain of title to the premises. Title insurance rates are regulated by the State of New York and accordingly, no company can charge more than the other.

Unfortunately, the formula to calculate the insurance premium is complicated. The purchaser’s attorney can telephone the title company to determine the exact premium. Premiums are lower if the purchaser is not obtaining a loan. The following are title insurance estimates (as of June 2016) which can be used as target amounts for combined purchaser and lender title insurance but should not be relied upon until the purchaser’s attorney has confirmed the correct premiums:

PURCHASE PRICE	LOAN AMOUNT	COMBINED PREMIUM
\$250,000	\$200,000	\$1,520
\$500,000	\$400,000	\$2,666
\$750,000	\$600,000	\$3,719
\$1,000,000	\$800,000	\$5,439
\$1,500,000	\$1,200,000	\$7,651
\$2,000,000	\$1,600,000	\$9,847

In addition to the title insurance premium, a purchaser will pay \$300 to \$500 for a variety of additional searches which will be handled by the title company (e.g. violation search, certificate of occupancy search, real estate tax search, name searches, survey inspection and bankruptcy search), an additional \$50 to \$100 for additional title policy endorsements required by the lender and an additional \$250 to \$750 for fees imposed for the recording of the deed, the mortgage, and other documents in the municipal office.

**Mortgage Recording Tax (House or Condo Loan)** – New York State imposes a tax on the purchaser based upon the amount of the loan called “mortgage recording tax.” The tax only applies to mortgages and therefore there is no such tax on a co-op loan. If the house or condo is located in the five boroughs of New York City and the purchase price is up to \$500,000, the tax is 1.8% of the mortgage amount. If the house or condo is located in the five boroughs of New York City and the purchase price is \$500,000 or more, the tax is 1.925% of the mortgage amount. If the house or condo is located in Nassau or Suffolk Counties, the mortgage tax is .80% of the loan amount. If the house or condo is located in Westchester or Rockland Counties, the mortgage tax is 1.05% of the loan amount. The mortgage tax in Yonkers is 1.55% of the loan amount (e.g. If the loan amount is \$200,000 and the house or condo is located in New York City, the tax would be \$3,600. If the loan amount is \$200,000 and the house or condo is located in Suffolk County, the tax would be \$1,500.) As a note, if a purchaser is acquiring two adjoining condominium apartments simultaneously, the New York State mortgage recording tax will increase to 2.80%.

**Special Taxes for Mount Vernon, New York (House or Condo Loan)** – For properties located in Mount Vernon, New York, the purchaser will be required to pay a transfer tax equal to 1% of the sales price to the

city.

**Special Taxes for Yonkers, New York (House or Condo Loan)** – For properties located in Yonkers, New York, the purchaser will be required to pay a transfer tax equal to 1.5% of the sales price to the city.

**Real Estate Tax Escrows (House or Condo Loan)** – Some lenders will not allow the borrower to pay real estate taxes when they become due. Unpaid taxes become a lien on the property which takes priority over the lender's mortgage on the property. The lender, in order to protect its interest in the property, will require that the lender make the purchaser's real estate tax payments. At closing, the lender will collect sufficient monies in escrow from the purchaser so that when the next payment of taxes are due, the lender will have a sufficient enough reserve account to pay the real estate taxes. In addition, when the purchaser begins to make monthly loan payments to the lender, the lender will also collect one-twelfth of the annual real estate taxes so that the lender can make all subsequent real estate tax payments. The purchaser should consult with his or her lawyer on the calculation of the escrow funds for the particular transaction.

**Homeowner's Insurance Escrows (House Loan)** – Homeowner's or hazard insurance protects the premises against damage caused by fire or other casualty. The lender may require that the purchaser set up an escrow account for insurance premiums as well as real estate taxes. In this manner, the lender's lien is protected if the premises are destroyed or damaged. The lender generally requires that a full year premium be paid in advance by the purchaser prior to closing. At the closing, the lender will collect sufficient monies in escrow from the purchaser so that when the next premium is due, it will have a sufficient enough reserve account to pay the annual homeowner's insurance premium. In addition, like real estate tax escrows, the lender will collect one- twelfth of the annual insurance premiums with the monthly payment of principal and interest so that the lender can make all subsequent insurance premium payments.

Note: Since condominiums and co-ops maintain a master insurance policy on the entire building, insurance escrows are generally not required by lenders in connection with a loan made on a condo or co-op apartment. The purchaser's attorney should obtain a copy of the certificate of insurance from the master policy reflecting the coverage on the building. However, a purchaser of a condo or a co-op should obtain liability, theft and personal property insurance coverage but such insurance is not required by the lender. A purchaser should contact his or her insurance agent to discuss the rates and premiums.

**Tax Service Fee (House or Condo Loan)** – Although the lender will require the establishment of a real estate tax escrow fund in which the purchaser pays every month, the bank generally does not administer the fund. The bank will usually hire an outside company which keeps track of the tax due dates. There is a one-time fee for this service which ranges between \$25 to \$175.

**Real Estate Taxes (House or Condo Loan)** – Real estate taxes are paid in advance (i.e. if the tax period is January 1 to June 30, the tax is usually paid on January 1). The fiscal year for real estate taxes in the five boroughs of New York City run from July 1 to June 30 and are usually paid in quarters (July 1, October 1, January 1 and April 1). If there is a lender making a loan to a purchaser, any real estate taxes due within 60 days of the date of closing will have to be paid at closing.

**Title Closer Attendance (House, Condo)** – It is customary to give a gratuity or attendance fee to the title closer for handling the closing. The fee/gratuity depends upon the complexity of the transaction and the purchase price ranges between \$150 to \$300.

**Lien Search (Co-op)** –The purchaser's attorney will order a lien search against the seller and the coop corporation. The search will determine if there are any liens, loans or judgments against the seller or co-op corporation which may have an effect on the purchaser's ownership of the apartment. The Seller is obligated to satisfy any liens set forth therein. If the purchaser is financing a co-op purchase, the lender will require that the purchaser's name be included in the search. The average cost for a lien search is \$250.00 to \$350.00. A note of caution: most if not all companies who perform lien searches limit their liability from \$50,000.00 to \$100,000.00. As a result, should the lien search company fail to detect an

existing lien, their liability is capped. In the event a lien is discovered after the closing in excess of the company's limits, the purchaser may be liable. As added protection, a new product has become available to co-op purchasers in the form of an Eagle 9 UCC Cooperative Interest Policy ("Eagle Policy"). This "Co-op policy" will insure the purchaser for actual loss in the event that, among other things, existing liens are not detected or anyone claims rights of ownership to the apartment after the closing. An Eagle Policy is neither required by law nor your lender (if applicable); however, given the limitation of liability associated with a standard lien search, it may be an option worth exploring especially when purchasing from an estate. While the premiums change occasionally, the rates as of the date of this Guide are as follows:

1. \$500,000 purchase price	-	premium \$759
2. \$750,000 purchase price	-	premium \$1,008
3. \$1,000,000 purchase price	-	premium \$1,257
4. \$1,500,000 purchase price	-	premium \$1,584
5. \$2,000,000 purchase price	-	premium \$1,912

**UCC-1 Filing Fee (Co-op Loan)** – The lender will require that a UCC-1 Financing Statement be filed in the county in which the apartment is located. The fee is generally \$75 to \$150 per filing.

**Managing Agent Fee (Co-op)** – The company that manages the co-op building in which the co-op apartment is located usually collects a closing fee from the purchaser ranging from \$250 to \$500 at closing. This fee is sometimes called a recognition agreement review fee.

**Adjustments (House, Condo, Co-op)** – The purchaser will need to reimburse the seller for all expenses the seller has prepaid. For a residential house, the purchaser will reimburse the seller for all real estate taxes paid in advance as well as the fuel and propane left in the tank at the time of closing. For a condo, the purchaser will reimburse the seller for all real estate taxes prepaid by seller as well as common charges prepaid by the seller. For a co-op, the purchaser will reimburse the seller for all maintenance expenses prepaid by the seller. Common charges and maintenance adjustments are usually less expensive at the end of the month for condos and co-ops since there are fewer days to adjust. However, some managing agents may require that the following month's common charge or maintenance be paid at closing.

**Attorney Fee (House, Condo, Co-op)** – Fees can start as low as \$1,500 and, depending upon the difficulty of the transaction and the experience of the attorney, can be as much as one percent of the purchase price. Attorney Fees usually do not include out-of-pocket expenses like overnight courier charges, messenger services, telephone and facsimile charges and photocopy charges.

**Points or Loan Origination Fee (House, Condo, Co-op Loan)** – A "point" is a fee charged by the lender and/or mortgage broker. One point equals one percentage point of the loan amount. Numerous mortgage brokers and lenders offer "no point" loans. Customarily, the more points you pay, the lower the interest rate. Be aware that sometimes points or a portion of the points must be paid prior to closing and sometimes they are paid at closing. If they are paid in advance, the purchaser should inquire whether or not points are refundable if the loan is rejected or if the transaction does not close.

**Interim Interest (House, Condo, Co-op Loan)** – There is a payment due to the lender for the interest that accrues on the purchaser's loan from the day of closing until the end of the month in which the closing occurs. The interim interest can be calculated by multiplying the loan amount by the interest rate, divide the product by 365 days and multiply that per diem by the number of days from the day of closing until the end of the month. (For example: \$200,000 loan at a ten percent interest rate = \$20,000 a year interest divided by 365 days=\$54.80 per day x the number of days left in the month). The later the closing date in the month, the smaller the interim interest will be. Interim interest is also known as "per diem interest," "odd interest," "pre-paid interest" or "short term interest."

**Move-In Fee/Damage Deposit (Condo, Co-op)** – Most cooperatives and condominium buildings impose a move-in fee or deposit to be paid at closing. Be sure to determine if the fee is refundable. The fee/deposit

can range between \$250 to \$1,000.

**Lender's Legal Fee (House, Condo, Co-op)** – It is customary for the borrower to pay the lender's attorney fee. The amount usually ranges from \$600 to \$1000. There may be additional expenses added for out-of-pocket expenditures and travel to a closing. The lender's legal fee covers, among other things, the lender's attorney review of title reports and lien searches, preparation of the loan documents and attending the closing.

**Flood Certification Fee (House, Condo)** – Most lenders will charge a fee to confirm if the property is in a flood zone. The fee ranges between \$15 to \$100.

**Mansion Tax (House, Condo, Co-op)** – Purchaser's will be required to pay one percent of the purchase price to New York State if the purchase price is over \$1 million.

**Private Mortgage Insurance (House or Condo Loan)** – If the loan amount exceeds 80% of the purchase price, many lenders will charge private- mortgage insurance (PMI) premiums on a monthly basis. This coverage does not protect the borrower –it protects the lender if the borrower defaults on repayment of the loan. Please check with your loan officer for the amount of the monthly premium.

**Peconic Bay Transfer Tax (House)** – A special tax is imposed on a buyer if purchasing property on the East End of Long Island. The tax is equal to 2.0% of the purchase price less an allowance as set forth on the following schedule:

**South Fork (Towns of East Hampton, Shelter Island and Southampton):**  
\$250,000 (improved land) \$100,000 (unimproved land)

**North Fork (Towns of Riverhead and Southold):**  
\$150,000 (improved land) \$75,000 (unimproved land)

**Miscellaneous Lender Fees (House, Condo, Co-op Loan)** - Lenders charge a variety of miscellaneous expenses sometimes called processing fees, underwriting fees, document preparation fees, wire transfer fees or post closing review fees. These fees can range between \$50 to \$500. In addition, many lenders charge for overnight couriers and wiring fees. The purchaser should check with his or her mortgage broker or lender regarding these extra fees.

**Special Fees For New Condominiums/Co-ops (Condo/Co-op)** – Purchasers of a new condo or co-op apartment from a sponsor/developer (i.e. the builder of the condo) can be expected to incur additional closing costs over those mentioned above. The purchaser's attorney must closely review the Offering Plan which provides a list of these costs. Generally, the purchaser will be required to pay the seller's New York State and New York City transfer taxes, the sponsor's attorney fee and a contribution to the building's reserve fund. These costs can be substantial and it is important that the purchaser's attorney advise the purchaser of such additional expenses prior to signing the contract (see Section XII of this guide).



## VII THE CONTRACT OF SALE



Once an offer has been accepted, the inspection has been completed, and the purchaser has been pre-approved for a loan, the seller's attorney will prepare the contract of sale and forward it to the purchaser's attorney. It is at this point that the purchaser should inform his or her attorney of any terms of the transaction and any special circumstances which may be important.

The attorney should make any changes or additions to the contract which may be necessary to protect the purchaser's rights. **ONE OF THE MOST IMPORTANT THINGS TO REMEMBER IS THAT IF THE TERMS ARE NOT IN THE CONTRACT OF SALE, THEY GENERALLY CANNOT BE ENFORCED** (e.g. if the purchaser fails to state that the floor must be repaired prior to closing, the Seller will not be obligated to repair the floor unless it is specifically set forth in the contract).

Once the contract is negotiated and the purchaser's attorney has completed the due diligence and it is acceptable to the purchaser, the purchaser's lawyer should explain the purchaser's rights and obligations under the contract. If the terms are agreeable, the purchaser will generally sign four copies of the contract and will provide a personal check payable to the order of the seller's attorney equal to ten percent of the purchase price representing the down payment. The contracts and down payment check are delivered to the seller's attorney. The seller's attorney will hold the down payment check in his trust or attorney escrow account until the closing or if the transaction is terminated. Thereafter, the seller signs the contract, the seller's attorney signs the contract to acknowledge receipt of the down payment and two fully executed copies of the contract are returned to the purchaser's attorney. Upon receiving back the fully signed contract, the purchaser's attorney will deliver a copy to the purchaser's loan officer/mortgage broker and real estate broker. The purchaser should then promptly submit the loan application.

The contract of sale should contain the following substantive provisions:

**The Parties** – The contract sets forth the names mailing addresses and social security numbers of the seller and purchaser.

**The Purchase Price** – The contract sets forth the price that the purchaser and seller agreed upon. The contract will also state the amount of the down payment, which is typically ten percent of the purchase price, as well as the balance due at closing.

**Inclusions/Exclusions** – The contract includes a list of the items included or excluded from the sale. The purchaser should provide his or her attorney with a list of items he or she believes are included in the sale (e.g. shades and blinds, carpeting, shades, appliances, air conditioners, light fixtures, and furniture). Be as specific as possible since it will avoid any misunderstanding at closing.

**The Closing Date** – The contract will state a closing date. This date is a target date, since there are several variables and numerous tasks to be accomplished between the signing of the contract and the actual closing. In order to close, the purchaser may need to obtain a loan (when applicable), a title report or lien

search, obtain co-op board approval (when applicable) and coordinate the schedules of the purchaser's attorney, seller, seller's attorney, title company (when applicable) and managing agent (when applicable) to arrive at a mutually agreeable closing time, place and date. Because many details must be set in place before closing, the law in New York generally allows either party to postpone (or "adjourn") the closing, when necessary, for 15 to 30 days beyond the closing date set forth in the contract. As the purchase process continues, the purchaser's attorney will be able to give the purchaser a better idea of when the closing may actually take place.

**The Place of Closing** – The closing is generally held at the offices of the lender's attorney for a residential house or condo purchase. If there is no financing, the closing will be held at the Seller's attorney's office. For a co-op, the closing is generally held at the managing agent's office or the co-op attorney's office. If purchasing a condo from the sponsor of a condo, the closing is generally held at the sponsor's attorney office.

**Mortgage Contingency** – If the purchaser needs a loan to conclude the purchase, the contract should provide that the closing is contingent upon the purchaser's ability to obtain a written loan commitment from a lender. The contract will provide that the purchaser must promptly apply for a loan once the contracts are signed and delivered. The purchaser must cooperate with the lender and provide any documentation the lender may require to process and approve the loan application. The contract usually provides that the purchaser will have 30 to 45 days to obtain a written loan commitment. If the loan application is rejected through no fault of the purchaser or if the purchaser was unable to secure a loan in an amount, interest rate and length of term as set forth in the contract, the purchaser or seller will have the right to cancel the contract and the down payment will be refunded to the purchaser. If the purchaser has been unable to obtain a commitment letter at the end of the 30 to 45 day period and the lender has not yet rejected the purchaser and continues to process the loan, the purchaser must request an extension of time from the seller. If the purchaser still has not obtained a commitment after an extension period or has been formally rejected by the lender, the purchaser will still have the right to cancel the contract and obtain a refund of the down payment. The purchaser will also have the choice to proceed with the transaction if the purchaser is unable to secure a loan and has the balance of the purchase price.

**Condition of Premises** – Most contracts provide that the purchaser buys the premises in "as is" condition, unless stated otherwise. The purchaser must advise his or her attorney of all repairs that must be made to the premises by the seller prior to closing so that the attorney can incorporate the language into the contract if the seller agrees to same. The premises should be vacant and broom clean at the time of closing. If any repairs are required after closing, a purchaser has absolutely no recourse against the seller and must bear the entire expense of the repair or replacement unless provisions are made in the contract or at closing. It is common to have a clause in the contract that provides that the plumbing, heating, air conditioning and electrical systems will be in working order at closing and that the roof and basement will be free of leaks. For condos and co-ops, the purchaser's attorney should seek to have a clause added to the contract that provides that the plumbing, heating, electrical and air-conditioning systems, to the extent that the seller is responsible under the by-laws, condominium declaration or proprietary lease, where applicable, will be in working order at closing.

**Board Approval (Co-ops Only)** – The sale of a co-op is conditioned upon the co-op board approving the sale of the apartment unless the purchaser is buying the apartment from a sponsor. The contract provides that the purchaser must promptly submit a co-op application for board approval after issuance of a commitment letter, if applicable. The purchaser must cooperate with the co-op board and supply any documentation it requires to approve the purchase. Since each co-op board will establish the financial requirements of a prospective purchaser, it would be wise to determine what these requirements are prior to signing a contract. In addition, numerous co-ops set financial limitations on the amount of money a prospective purchaser may borrow in order to conclude the transaction (e.g. many Park Avenue or Fifth Avenue co-ops only allow a purchaser to finance 50% or less of the purchase price while most other co-ops allow a purchaser to finance 75% to 80%).

**Waiver of Right of First Refusal (Condo Only)** – The sale of a condominium apartment is conditioned

upon the condominium's board of managers waiving its right to purchase the apartment (called a "waiver of right of first refusal"). The waiver must be delivered at the closing.

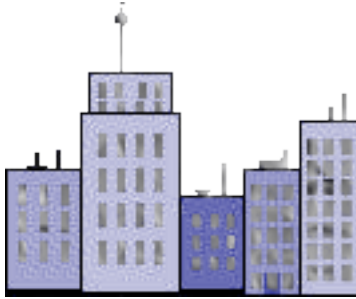
**Marketable Title (Houses and Condos Only)** – The contract provides that the sale of the premises is conditioned upon the seller transferring "marketable title" to the premises at the closing. This means that the seller must provide ownership of the premises free and clear of all liens, judgments, encumbrances (i.e. mortgages) and other adverse property matters except those the purchaser specifically agrees to in the contract. After the contract is signed, the purchaser's attorney will order and review the title report to determine whether the documents affecting the premises are in order, whether the seller truly owns the premises and has full authority to sell it and whether anyone else has claimed an interest in it. A copy of the title report will also be delivered to the lender's attorney, if the purchaser is financing the transaction. In some cases, a title examination may uncover title defects which could jeopardize a buyer's ability to purchase clear title to the premises. If the report reveals title defects, the seller may be required to undertake procedures to clear the defects. The purchaser's attorney will confirm that all title defects, if any, have been cured before the closing. Once the defects, if any, have been corrected, the title company will insure the purchaser, and the purchaser's lender, if the purchaser is obtaining financing the transaction, and will issue a title policy to both the purchaser and the lender.

**Lien Search (Co-ops only)** – Alien search is a search made against the seller, the co-op corporation and, if financing the purchase of the apartment, against the purchaser. The search will reveal if there are any judgments, liens, UCC-1s or other encumbrances on record against these parties. The contract will provide that all open judgments, liens, UCCs or encumbrances against the seller must be removed or satisfied prior to closing. The lien search company does not insure the transaction and there is no title insurance issued by the lien search company. However, a purchaser of a co-op apartment can, if he or she desires, obtain co-op title insurance if he or she pays the appropriate premiums at closing. (see Lien Search page 21).

**Certificate of Occupancy (Houses and Condos Only)** – Each residential house must have either a certificate of occupancy issued by the local building department or a letter in lieu of such certificate stating that the structure was built prior to laws requiring a certificate of occupancy. If additions have been made to the house, (such as new rooms, a garage, a tennis court, a swimming pool, and even a deck), the seller must produce either a certificate of occupancy from the local building department or a letter commonly known as a "compliance letter" for such additions. For a condo, the purchaser's attorney must be sure there is a valid certificate of occupancy on the entire building.

**Legal Description/Survey (Houses Only)** – It is important that the seller provides the dimensions of the land on which the house is located. This is known as a legal description. The legal description (also known as a "metes and bounds" description) contains courses and directions which are taken from a survey. A survey is a drawing describing where land is located and measured and its boundaries are verified by a licensed surveyor. The survey will give a purchaser the location of the house, driveway, fences and other structures on the property. The purchaser should try to obtain an existing survey from the seller prior to signing the contract. If one is not available or if the survey is unacceptable, the purchaser may have to pay to obtain a new survey.

## VIII PRE-CLOSING REQUIREMENTS



There are certain matters which must be handled by the purchaser and his or her attorney prior to closing. Requirements may vary depending upon whether the purchaser is buying a house, condo or co-op.

### **A. House and Condo Pre-Closing Requirements**

Prior to scheduling a closing, and after the issuance of a commitment letter, if applicable, the purchaser's attorney will order and review the title report and help clear any title issues. The issuance of a title report may take as long as 10 to 15 business days after ordering. If there are any judgments found in the title report against the purchaser, these judgments must be satisfied prior to closing, possibly delaying the closing. If purchasing a house, the purchaser will need to have homeowner's insurance in place. The purchaser should contact his or her insurance agent to obtain premiums for fire and disasters, theft, liability and personal property coverage and to provide the agent with information about the premises. The purchaser will need to have the insurance in place on the closing date and must provide proof of such coverage to the lender's attorney prior to closing. If purchasing a condo, the purchaser may be required to complete and submit an application to the managing agent of the building. The condo application is far less detailed than that of a co-op application. There is usually a fee imposed by the managing agent for processing the application. Finally, while the condo association maintains a master insurance policy on the entire building, it may be wise for the purchaser to obtain insurance for liability, theft and personal property.

### **B. Co-op Pre-Closing Requirements**

Prior to scheduling a closing, the lender or lender's attorney will prepare two documents, if the purchaser is financing the purchase of the apartment. The first document is the "recognition agreement" also referred to as the "Aztech Agreement." This two page document is signed by the lender, purchaser and the co-op corporation and is described in more detail in the "Closing Documents" section of this Guide. After the purchaser signs the recognition agreement, the purchaser should return all copies to the purchaser's attorney or the purchaser's real estate broker so they can arrange to have the co-op corporation sign and have it available at closing. The other document is the Uniform Commercial Code Financing Statement (also known as the "UCC-1") signed by the lender and the purchaser. Once the purchaser signs the UCC-1 it should also be returned to the purchaser's attorney who will make arrangements to have it filed in the county register's office prior to closing. Generally, a closing cannot be scheduled until the UCC-1 has been filed. The cost for filing the UCC is approximately \$75 to \$150.

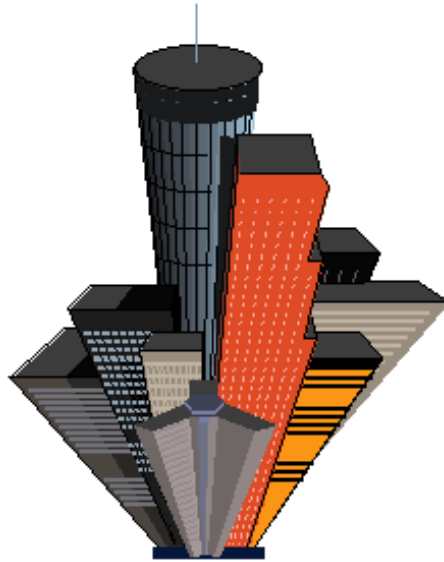
Prior to scheduling a closing, and after the issuance of a commitment letter, if applicable, the purchaser's attorney or the lender's attorney will order and review the lien search and help clear any issues. If there are any judgments found in the report against the purchaser or seller, these judgments must be satisfied prior to closing. If there are other liens filed against the seller, the liens must be satisfied at the closing. The lien search takes approximately one week. The cost for the lien search is approximately \$500 to \$750.

The purchaser will also need to complete the co-op application. The co-op application will usually require

a statement of assets and liabilities, copies of tax returns, paycheck stubs, bank statements, business and personal reference letters and a letter from the purchaser's current landlord, if applicable. The application will usually require a copy of the contract, a copy of the commitment letter and the recognition agreement. Under most circumstances, the purchaser will not be able to submit his or her co-op application until a loan commitment letter has been issued since the co-op board will not want to take the time to review and approve a purchaser if later the purchaser is unable to obtain a loan. The managing agent for the co-op will usually collect a fee from the purchaser upon submission of the application in the amount of \$250 to \$500 to process the application and to obtain a credit report.

Finally, a purchaser will be required to have a personal interview with the co-op board after the application has been reviewed. The primary purpose of this meeting is to ensure that the purchaser is the type of person the building wants as a resident. Usually, if an interview has been set up, the purchaser has been approved from a financial perspective. As a note, a co-op board cannot decline admission based on discriminatory practices. Also, like a condominium, the co-op corporation maintains a master insurance policy on the building only, so it may be wise to obtain insurance for liability, theft and personal property.

## IX FINAL CLOSING PREPARATION



The days before the closing can be time consuming for both the purchaser and the purchaser's attorney. The following is a list of the remaining details to be handled just before closing:

**A. Scheduling** – Once the contract conditions have been satisfied and the lender and lender's attorney are ready to close, the time, place and location of the closing can be scheduled. For a house or condo, the closing is generally held at the bank attorney's office. For a co-op, the closing is held at the office of the managing agent or the co-op attorney's office.

**B. Utilities and Moving** – The purchaser should contact the appropriate utility companies, telephone Company and cable TV company to arrange for service on the closing date. If purchasing a house, the purchaser may have to transfer the water bills if the water servicing the home is from a public utility, and the purchaser may want to contact the fuel company to arrange for delivery of oil if the property is heated by oil. Speak to a moving company to get estimates and to set a moving date. Most moving companies will insist on payment in cash or certified check on the moving date.

**C. Closing Checks** – The purchaser's attorney will review the closing costs that the purchaser will have to pay at closing as well as what certified or official bank checks will be needed at the closing. The purchaser's attorney will instruct the lender's attorney what checks to bring to the closing representing the loan proceeds. If the seller has a loan to pay off, the purchaser will be instructed to prepare checks payable to the seller's lender representing a portion of the purchase price. Purchasers should be sure to transfer monies to a liquid bank account in sufficient time to have certified or official bank checks available in time for closing.

**D. Walk Through/Final Inspection** – The purchaser should arrange to inspect the premises as close as possible to the closing date one last time to ensure that the premises are in basically the same condition as they were at the time the contract was signed and that the plumbing, heating and electrical systems as well as appliances are in working order. The final walk through can be arranged with the real estate broker. It is best to do the final inspection after the seller has moved out to determine if there has been any damage by the move. During the walk through, the purchaser should flush every toilet; run every

faucet, open and close the cabinets and windows, run the appliances, check the heating and air conditioning and try all lights. The purchaser should make sure everything that the contract states is included with the sale is present at the premises (e.g. light fixtures, ceiling fans, rugs, blinds, draperies, furniture, etc.).

In the event a repair is needed and it is discovered just before closing, there are several options: (i) ask the seller's attorney to hold money in escrow pending receipt of an estimate for repairs; (ii) obtain an estimate before closing and deliver the estimate at closing and have the purchaser receive a credit for the repair; or (iii) if an estimate is not available and the parties can agree on a credit, have the seller give the purchaser a credit at the closing at the agreed upon amount. As a note, when purchasing from a sponsor, generally the sponsor will enter into a "punch list" that provides that any repairs will be completed by the sponsor after the closing.

If something is not working during the walk through and the purchaser fails to raise it at closing, the purchaser will not be able to have these items corrected by the seller after the closing. For a residential house, the purchaser may want to have the engineer do an update inspection from its original report if a substantial amount of time has passed since the original inspection.

**E. Identification** – Every purchaser should be prepared to provide proof of identity at the closing. A valid drivers license is usually sufficient however some lenders require two forms of identification.

## X THE CLOSING



Typically, a closing will take between one to two hours depending on if the transaction is all cash or being financed.

### **A. What Happens at the Closing?**

Financed closings will be divided into two separate small closings. The first is the loan closing in which the purchaser signs all of the documents required by the lender to make the loan to the purchaser. Second is the conveyance closing in which the purchaser and the seller sign all of the documents to transfer the premises into the purchaser's name. There are differences between closings for a house, condo and co-op.

**1. The House and Condo Closing** – The closing is attended by the purchasers, sellers, their respective attorneys, the lender's attorney, the title company closer and the real estate broker. If the seller has a loan affecting the premises, the loan will be paid off at closing by delivering a check to the title company which will then forward the check to the seller's lender. At the closing, the purchaser will first sign all documents necessary to complete the loan transaction. These documents include a mortgage and a promissory note. Thereafter, the purchaser will sign and/or receive all documents to convey the premises to the purchaser including the deed and title report. If purchasing a condo, the purchaser will also sign a "unit power of attorney" which allows the condo board to act on behalf of the apartment owners. Certified or official checks representing the balance of the purchase price and adjustments are exchanged for the keys and the purchaser will pay the appropriate title charges to the title company.

**2. The Co-op Closing** – The closing is attended by the purchasers, sellers, their respective attorneys, the lender's attorney, the managing agent representative or co-op attorney and the real estate brokers. If the seller has a loan to pay off, the attorneys who represent that lender will also attend the closing to deliver the seller's existing stock certificate and proprietary lease and to collect the check for the seller's loan. At the closing, the purchaser will first sign all documents necessary to complete the loan transaction. These documents include a security agreement, a promissory note, a stock power and assignment of proprietary lease. Thereafter, the purchaser will sign and/or receive all documents to convey the apartment to the purchaser including the stock certificate, proprietary lease and consent. The original stock certificate and proprietary lease are delivered to the lender's attorney to hold as collateral to the loan. Certified or official checks representing the balance of the purchase price and adjustments are exchanged for the keys. After the closing, whether a house, condo or co-op, the purchaser's attorney will prepare a closing statement which will include an attendance list, a summary of the transaction, a financial summary and copies of all of the documents. If the purchaser buys a house or a condo, the purchaser will receive the original recorded deed and the final title policy approximately two to eight months after the closing, depending on which county the premises are located in.



## **B. Closing Documents**

The following is a list of forms and documents that are generally required to be signed and/or delivered at the closing.

### **1. House and Condo Documents:**

- a. Deed – Real property is transferred by a deed which is recorded in the county where the premises are located.
- b. Mortgage – The purchaser signs a mortgage which is recorded in the county where the premises are located. The mortgage states, among other things, that the lender has made a loan to the borrower for the purchase of real property, the lender has a lien on that property and in the event the borrower does not make the loan payments under the promissory note, the lender can take the premises from the borrower through a foreclosure action and sell it to another party.
- c. Promissory Note – The purchaser will sign a promissory note which states that the lender has given a loan to the purchaser and how and under what terms the loan is to be repaid.
- d. Equalization and Assessment Form – For residential homes and condos, the purchaser signs a document which alerts the real estate taxing authorities where to send tax bills.
- e. Title Report – The title report is the purchaser's insurance reflecting that he or she has received clean and marketable title to the premises.
- f. Tax Authorization Form – The purchaser will sign a document authorizing the lender or its agent to collect and pay the real estate taxes assessed against the property.
- g. Unit Power of Attorney – For condo purchases, the purchaser will sign a unit power of attorney authorizing the condominium to act on behalf of each apartment owner and to handle fundamental matters in the building.
- h. Carbon Monoxide Affidavit – Both seller and purchaser must acknowledge that there is an operational carbon monoxide alarm in the home.

### **2. Co-op Documents:**

- a. Stock Certificate – The co-op corporation issues a stock certificate in the amount of shares allocated to the apartment to the purchaser. If there is financing, the lender holds the original stock certificate until the loan is satisfied or the apartment is sold.
- b. Proprietary Lease – The purchaser signs a proprietary lease which details the responsibilities of the purchaser and the co-op corporation. As an alternative to issuing a new proprietary lease, the co-op corporation may assign the existing lease issued to the seller or his or her predecessor to the purchaser in which case the seller signs an Assignment of Lease and the purchaser signs an Assumption of Lease. The lender holds the original proprietary lease until the loan is satisfied or the apartment is sold.
- c. Consent – The co-op corporation signs a document consenting to the transfer of the apartment to the purchaser.
- d. Security Agreement – The lender requires the purchaser to sign a document called a security agreement which provides, among other things, that the lender has lien on the shares of stock and proprietary lease and in the event of no payment of the loan, the lender can take title to the stock and lease and transfer these documents to a third party as part of a foreclosure proceeding.

e. Promissory Note – Similar to the mortgage note, the purchaser will sign a promissory note which provides how and under what terms the loan is to be repaid by the purchaser to the lender.

f. UCC-1 Financing Statement – This document states that the lender has a lien on the shares of stock and proprietary lease of the co-op apartment. The UCC-1 is usually filed in the county clerk's office prior to closing.

g. Recognition Agreement – The Recognition Agreement provides that the co-op corporation “recognizes” that the purchaser has taken a loan from the lender and that if the purchaser does not pay the monthly maintenance charges, the co-op corporation must notify the lender so that the lender can pay the maintenance.

h. Stock Power – The bank requires the purchaser to sign a stock power so that if the purchaser fails to make the payments under the promissory note, the lender can transfer the shares of stock being held by the lender to itself or a third party after the foreclosure action is completed.

i. Assignment of Lease – The bank requires the purchaser to sign an assignment of lease so that if the purchaser fails to make the payments under the promissory note, the lender can transfer the proprietary lease being held by the lender to itself or a third party after the foreclosure action is completed.

j. Lien Search – A search is made to determine if there are any judgments or liens against the seller, purchaser and co-op corporation. The lender requires that all open liens, loans and judgments against the seller, purchaser and co-op corporation found in the lien search be satisfied prior to closing.

### **3. Documents for House, Condo and Co-op Purchases:**

a. Transfer Tax Documents – The purchaser will sign a New York State transfer tax form and, if the premises are located in the five boroughs of New York City, a New York City transfer tax form. Both documents reflect what transfer taxes the seller is required to pay. These documents are typically prepared by the seller's attorney. Under a new law in 2005, these documents must be prepared through a website under a system called ACRIS (Automated City Register Information System) if the property is located in the five boroughs of New York City.

b. HUD-1 Settlement Statement – The purchaser and seller will be required to sign this document prepared by the lender which summarizes all closing costs paid by the parties.

c. Loan Application – The purchaser will sign a final typed version of the original handwritten loan application if he or she is financing the transaction.

d. Disbursement Authorization – The purchaser will sign a form which advises the lender how the loan checks are to be drafted, if he or she is financing the transaction.

e. Compliance Agreement – The purchaser will sign a document which provides that in the event the loan documents contain an error, the purchaser will agree to comply with resigning any of these documents, if he or she is financing the transaction.

f. Truth In Lending Statement – The purchaser will sign a document which outlines what payments are to be made over the life of the loan if he or she is financing the transaction.

g. W-9 Form – The lender will have the purchaser sign this form certifying his or her social security numbers if he or she is financing the transaction.

h. Closing Statement – The lender will provide a statement as to what the lender’s closing costs are and how much the purchaser’s monthly installments will be with any escrows if the purchaser is financing the transaction.

i. Occupancy Agreement – Some lenders require the purchaser to certify that he or she will occupy the premises as their primary residence within 30 days after the closing date.

j. Miscellaneous Documents – Some lenders require an assortment of other documents which must be signed by the purchaser including a variety of affidavits, mailing address and name certifications, escrow disclosures and first payment coupons.

k. Smoke Alarm Affidavit – Both seller and purchaser must acknowledge that there is an operational smoke alarm in the home.

## XI POST CLOSING FOLLOW UP



After a closing is completed, the purchaser should confirm that he or she is receiving common charge, maintenance, real estate tax, insurance and loan payment invoices, where applicable. Approximately two to four weeks after closing, the purchaser's attorney should provide the purchaser with a closing binder which will contain a financial summary of the transaction as well as copies of all documents signed in connection with the transaction.

In addition, when purchasing a cooperative apartment, the attorney should deliver to the purchaser the original stock certificate and proprietary lease if there was no financing. The purchaser should keep these documents in a safe place and will be needed if refinancing or selling the home. If the stock and lease are misplaced, there could be a substantial fee imposed by the cooperative corporation to replace these documents.

For a condo or house purchase, approximately four weeks to six months after closing, the deed will be recorded in the appropriate county and returned to the purchaser's attorney who in turn will forward the deed to the purchaser. The county will maintain a copy of the recorded deed on file in the event the original is misplaced. In addition, the purchaser's attorney will receive the original title insurance policy which should also be forwarded to the purchaser.

If a purchaser intends to refinance or sell the property, keeping these documents in an accessible but safe place is advisable.

Every purchaser should keep a copy of all invoices for improvements to the home which can be used to offset capital gains tax when the home is sold.

## XII OTHER REAL ESTATE CONCERNS



### A. Sponsor Purchases

A newly constructed condominium or a conversion of a building from a rental apartment building into cooperative ownership or a condominium is handled by an entity called a sponsor (also known as a developer). The sponsor must follow very strict regulations governed by the New York State Attorney General Office when offering apartments for sale. Accordingly, all sponsor sales are offered through a fairly complicated and lengthy book called an offering plan or prospectus. It is very important to have an attorney review the plan carefully and advise the purchaser of the following issues and risks when purchasing a sponsor apartment:

**1. Reserve Funds and Working Capital Funds** – It is important for a purchaser to determine if the sponsor has elected to provide for a reserve fund and/or working capital fund to be used for capital improvements or repairs to the building.

**2. Budget** – The projected budget for the first year of operation in the plan must be reviewed to see if the building will be receiving sufficient income to pay for its expenses.

**3. Common Charges/Maintenance/Real Estate Taxes** – Every purchaser should understand what the projected monthly common charges or maintenance for the apartment will be as well as the projected real estate taxes pursuant to the plan.

**4. Sales and Sublets** – Most condominium offering plans provide that unit owners may sell or sublet their apartment without right of restriction, subject to the condominium's right of first refusal. Some offering plans may limit the time period for leasing or subletting the apartment.

**5. Repairs** – A purchaser must know the condition of the building when purchasing under an offering plan. If the building will be new, no repairs will be required. However, if the building is a conversion from a rental into a co-op or condo, it is advisable to review the engineer's report in the offering plan and determine how much the sponsor is willing to contribute to the repairs or improvements of the building.

**6. Unsold Apartments** – A determination must be made as to how many units are under contract or have closed in the building. Generally, lenders will not provide financing to purchasers if there are more than 50% unsold apartments in the building (many lenders require 70% of the apartments to be sold before they will make a loan).

**7. Sponsor Control** – The sponsor usually maintains control of the board of directors until a certain

number of years have passed or after a certain percentage of the units have closed. During the time the sponsor has control of the condominium, it will have control of the maintenance, facilities and services to be provided to the unit owners and shall determine the common charges to be paid by the apartment owners.

**8. Alterations** – All structural alterations to the apartment can only be made with the prior written approval of the board of managers of the condominium. If the sponsor has not yet received the final certificate of occupancy at the time of the closing, then the purchaser may not be able to complete alterations or renovations in the apartment until the final certificate of occupancy has been obtained (which can be up to two years after the first closing).

**9. Superintendent** – Many offering plans provide that there will be an on site superintendent. However, it is important to confirm this. In addition, if the super does live in the building, some plans provide that the condominium will purchase the apartment from the sponsor and pay the sponsor back over a period of time pursuant to the terms of a loan. The purchaser should make sure that the loan payments, real estate taxes, maintenance and common charges, where applicable, are included in the budget of the building. Alternatively, some plans require each purchaser to pay their pro-rata portion of the superintendent's apartment at the closing.

**10. Build-Out/Punchlist** – Most offering plans provide that the common areas may not be completed and services may not be available for up to one year after the first closing. In addition, once the sponsor obtains a temporary certificate of occupancy, the sponsor can require you to close even if all minor work in the apartment has not been completed. If minor work remains incomplete, the sponsor and the purchaser will sign a punch list agreement which provides that the work will be completed in a reasonable amount of time.

**11. Sponsor Experience** – The purchaser should determine if the sponsor, or its principals, have developed any other condominiums. If the sponsor does not have prior experience, this could have an adverse impact in the initial operation of the building.

**12. Financing** – Most offering plans provide that the contract of sale is not contingent upon the purchaser securing financing. Accordingly, if the purchaser does not obtain a loan, he or she must find alternative financing or the purchaser may not receive a refund of the down payment.

**13. Transfer Taxes** – In most offering plans, the New York State Attorney General allows the sponsor to pass on the New York City and New York State transfer taxes to the purchaser when purchasing the apartment. Payment of such tax may be negotiable depending upon the market. Whenever a purchaser pays the transfer taxes, the City and the State take the position that the purchase price should be increased or “grossed up” by the amount of the transfer tax. Accordingly, the transfer taxes are added back into the purchase price and then the taxes are calculated again. The purchaser will also be required to pay these taxes again when selling the Apartment. NYC Transfer Tax is presently 1.0% of the purchase price if the sale is under \$500,000 and 1.425% of the purchase price if the sales price is \$500,000 or over. The NYS Transfer Tax is presently .40% of the sales price. Furthermore, if the purchase price is over \$1 million, the purchaser will be required to pay the New York State “mansion tax” presently equal to 1% of the purchase price at the closing. If the “grossed up” purchase price exceeds \$1M, the purchaser will pay the mansion tax even if the original purchase price was under \$1 million. In addition, if the purchaser buys two or more units simultaneously, the New York City transfer tax increases to 2.625%. As a note, there is no city transfer tax in Nassau, Suffolk or Westchester counties.

**14. Advertising** – Most offering plans provide that purchasers cannot advertise the sale of the apartment before the closing and sometimes up to one year after the closing.

**15. Closing Date and Penalties** – Most offering plans provide that the closing date will be upon 30 days written notice by the sponsor. If a purchaser fails to close on the closing date, the purchaser will be subject to a serious penalty unless a grace period has been negotiated (usually equal to 0.03% of the purchase price for each day) . As a note, closings cannot occur until the sponsor has obtained a temporary certificate of occupancy (TCO) and if a condominium, the condominium declaration has been filed with the appropriate municipal office. The procurement of the TCO and the filing of the declaration are out of the sponsor’s control and there can be delays in securing these documents.

**16. Commercial Space** – It is very important to try to determine who will occupy the commercial space, if any. The commercial unit is usually retained by the sponsor and it may have the right to lease it to a bar or restaurant which maybe noisy.

**17. Deposits** – Most offering plans provide that a purchaser will be required to make a down payment of ten percent of the purchase price when signing the contract. However, many offering plans provide that the purchaser must also make an additional down payment within certain time periods. If the purchaser fails to make the second installment on time, it may result in a default of the initial down payment.

## **B. Foreign Investors**

In 1984, the Internal Revenue Service passed the Foreign Investor Real Property Transfer Act (FIRPTA). FIRPTA’s objective is to force non-resident aliens to file U.S. income tax returns and pay the appropriate tax on U.S. source profits. The IRS concern was that a foreigner would sell U.S. real estate, make a profit and fail to file a U.S. income tax return and pay any taxes associated therewith. FIRPTA prevents this by requiring withholding of 10% of the sales price (if between \$300,000 and up to \$1,000,000), 15% of the sale price (if between \$1,000,000 and above) and 35% of the sales price (if the seller is a foreign entity) regardless of the amount of the profit from the transaction.

FIRPTA applies to individuals as well as entities such as foreign corporations and partnerships. It applies to the transfer of all U.S. real property interests including the sale of cooperative apartments.

The required payment of ten percent is a deposit on any tax liability owed by the property owner. Similar to payroll tax withholding, the deposit is not lost; it is merely a deposit on the tax owed. If too much was withheld, the seller can wait until the end of the calendar year and then file a tax return (IRS Form 1040R) to apply for a refund for overpayment.

In New York State, the obligation to make the required FIRPTA payment to the IRS is on the purchaser and the purchaser’s attorney. Accordingly, the purchaser’s attorney will hold the ten percent deposit in his or her attorney trust account until the IRS has made a determination as to the tax due.

The first step in determining if there must be FIRPTA withholding is whether the seller is a “foreign person.” At the closing, the seller can sign an Affidavit of Non-Foreign Status to document the exemption if indeed no withholding tax is required. The Affidavit can be signed by a U.S. citizen, a U.S. green card holder or a non-U.S. citizen provided he or she meets the substantial presence test (based on the number of days present in the United States). If the seller is exempt, nothing further is required and no monies are withheld. If however the seller is a non-resident alien, the transaction may still be exempt if it is a sale for less than \$300,000 and the property will be the purchaser’s personal residence. This provision can be incorporated into the contract of sale and again no filing is required and no monies need to be withheld.

If the above exemptions do not apply, the transaction is subject to FIRPTA. However, an exemption from the full withholding tax (ten percent of the sales price) is available if the seller’s true tax can be proven to be less than the withholding amount. This requires IRS approval prior to the closing of the transaction. The appropriate forms can be completed by the seller’s attorney or his or her accountant.

The form is submitted to the IRS with information regarding the seller's original purchase price, closing costs on the sale and purchase of the property, capital improvements and the like. Within 90 days of request, the IRS is required to determine if a smaller withholding amount is appropriate.

If forms are filed with the IRS before closing but approval cannot be obtained before closing, the purchaser's attorney will hold the funds pending the IRS determination. When the IRS determination is received, the funds are released to the seller and the IRS as applicable.

Many foreign investors do not know or understand this requirement when they purchase and sell a property. It is imperative that the Foreign Investor Real Property Transfer Act is thoroughly explained by the attorney to the non-resident alien prior to purchasing a property in the United States.

### **C. Section 1031 Tax Free Exchanges**

A 1031 Exchange, also known as a tax-deferred exchange, allows a property owner to sell investment property and to defer capital gains and depreciation recapture taxes. This assumes reinvestment of 100% of the equity into "like-kind" property of equal or greater value. Any property held for investment purposes or for productive use in a trade or business generally qualifies as "like kind" property for 1031 Exchange purposes.

1031 Exchange rules require an investor to identify up to three potential "replacement" investment properties within 45 days of the closing on their relinquished property. The acquisition of the replacement investment property (or properties) must be successfully completed within 180 days of close of the relinquished property.

The successful completion of a 1031 Exchange is facilitated by an investment consultant who specializes as a qualified intermediary. At closing, proceeds are transferred to a third party called a facilitator or qualified intermediary who holds the proceeds until they are used to acquire the new property.

You can exchange a single property for multiple properties, or purchase one property from the proceeds of several. Proceeds not used to purchase new investment property are taxed as a cash sale.

A 1031 Exchange can defer the capital gain taxes that are due when you sell property that has increased in value or been depreciated for tax purposes. These federal and state capital gain taxes can be costly. Internal Revenue Code Section 1031 can benefit the purchaser in several other ways. By deferring taxes, the property owner will have increased flexibility, leverage and buying power. Exchanges also allow a property owner to change, diversify or consolidate his or her investments. The deferment is like getting an interest-free loan on the tax dollars you would have owed for a cash sale. More equity is retained, and that helps you move into properties of higher value each time you perform a 1031 Exchange.

A 1031 Exchange is possible when real estate is held for investment purposes. It cannot be used for the sale of a personal residence. Exchanged properties must be "like kind." For a real estate exchange this means real property for real property, but not necessarily land for land or a rental house for another rental house. Please discuss the exchange with an attorney familiar with this tax saving device.

### **D. New York State Gains Tax Considerations**

New York State amended the Tax Law by adding Section 663 to require a non-resident seller (including estates and trusts) to pay estimated personal income tax on the gain, if any, in connection with the sale of real property in the state. These new procedures were implemented by the New York State Department of Taxation and Finance on September 1, 2003.

Every non-NYS resident seller transferring a "fee" interest in real property must file Form IT-2663 entitled non-resident Real Property Estimated Income Tax Payment Form, prior to closing with the New York State Department of Finance and pay estimated gains tax due, if any. When transferring a cooperative apartment, the corresponding form is form IT-2664, entitled Non-Resident Cooperative Unit Estimated



Tax Payment Form. This form must be filed whether or not a gain is expected. The Tax Department, upon receipt of the payment, will return to the Non-Resident taxpayer a stamped certification which must be submitted to the City Register or County Clerk at the time of recording the deed. No deed will be recorded without either the stamped certification or a signed statement that the seller is a New York State resident or exempt.

Before the new law went into effect, Sellers were always required to pay a tax when there was the profit on the sale of property in New York when they filed their NYS tax return. The problem was that nonresidents did not always file NYS tax returns. The New York State Legislative amended the state law to now require nonresidents who sell property in New York to pay an estimated tax on the gain before the deed is recorded. Currently the amount of the tax is calculated by multiplying the gain on the sale by 8.882% (as of 2016).

Customarily, a seller, whether a resident or non-resident of New York State, would have to pay a transfer tax equal to 0.4% of the sales price and form TP-584 would be completed and signed by both seller and purchaser at closing. New York State Transfer Tax Form TP-584 has been amended to add Schedule D. With Schedule D now added, the seller must either indicate that they are a New York State resident or exempt. A non-resident seller is exempt from paying the estimated gains tax under three situations:

1. The real property being transferred is being used exclusively as the seller's principal residence; or
2. The seller is transferring the property to a lender as part of a foreclosure; or
3. The seller or purchaser is an agency of the United States, the State of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or a private mortgage insurance company.

When there is no exemption, the non-resident taxpayer must complete Form IT-2663. Neither Schedule D of Form IT-584 nor Form IT-2663 need be completed if the interest transferred is not a fee simple interest in real property (i.e., co-op units or leasehold interests) or if the real property is being transferred by anyone or any entity other than an individual, estate or trust. The estimated tax must be paid at the closing.

## **E. Financial Disclosures**

Effective March 1, 2016, when one purchases a property (whether a condominium or cooperative apartment) in an entity (i.e. limited liability company, corporation, partnership other than a trust), the purchase price is in excess of \$3,000,000 and the purchase takes place without bank financing, the purchaser must complete a financial disclosure form (on IRS Form 8300/FinCEN Form 8300) which discloses the source of the funds used for the purchase. In addition, all natural persons that compose all of the members of a limited liability company purchaser must provide their names, addresses and tax identification numbers. Also, all partners of either a general or limited partnership and all shareholders that own directly or indirectly 25% or more of the equity interest in the purchasing entity must also provide names, addresses and tax identification numbers for all of its partners or shareholders. Please refer to the following link <https://www.irs.gov/pub/irs-pdf/f8300.pdf>.

## **XIII CONCLUSION**



The purchase of a house, condo or co-op is a complex, time-consuming process. Utilizing the services of experienced professionals eases the process and ensures a smooth closing.

The following pages include closing cost summary work sheets, a loan qualification worksheet and a section for a purchaser's notes on various homes that have been viewed.

### **GOOD LUCK AND ENJOY YOUR NEW HOME!**

While real estate closing requirements have not changed in recent years, the information contained in this Guide may change without notice. Please consult with an attorney, loan officer/mortgage broker, and real estate agent before signing a contract of sale.

## Appendix A Closing Cost Worksheet

Apartment Application Fee (Condo/Co-op)	\$ _____
Engineer/Inspection Report (House/Condo/Co-op)	\$ _____
Lender Application Fee (Loan)	\$ _____
Title Insurance Premium (House/Condo)	\$ _____
Departmental Search (House/Condo)	\$ _____
Recording Charges (House/Condo)	\$ _____
Mortgage Recording Tax (House Loan/Condo Loan)	\$ _____
Mansion Tax	\$ _____
Real Estate Tax Prepayment (House Loan/Condo Loan)	\$ _____
Real Estate Tax Escrow (House Loan/Condo Loan)	\$ _____
Tax Service Fee (House Loan/Condo Loan)	\$ _____
Title Closer Attendance Fee/Gratuity (House/Condo)	\$ _____
Lien Search (Co-op)	\$ _____
UCC-1 Filing Fee (Co-op)	\$ _____
Managing Agent Fee (Co-op)	\$ _____
Adjustments:	
1. Maintenance (Co-op)	\$ _____
2. Common Charges (Condo)	\$ _____
3. Real Estate Tax (House/Condo)	\$ _____
Attorney Fee Disbursements (House/Condo/Co-op)	\$ _____
Points (House Loan/Condo Loan /Co-op Loan)	\$ _____
Per Diem Interest (House Loan/Condo Loan/Co-op Loan)	\$ _____
Lender's Legal Fee (House Loan/Condo Loan/Co-op Loan)	\$ _____
Miscellaneous Fees (House Loan/Condo Loan/Co-op Loan)	\$ _____
Sponsor's Fees (Condo)	
1. Transfer Taxes	\$ _____
2. Working Capital Fund Contribution	\$ _____
3. Sponsor Legal fee	\$ _____

## Appendix B

### Loan Pre-qualification Worksheet

The following is a list of information a purchaser should have available before he or she contacts the mortgage consultant for a professional loan pre-qualification:

A. Gross Annual Income:	\$ _____
B. Additional Income:	
1. Interest Income	\$ _____
2. Alimony	\$ _____
3. Bonuses/Commissions	\$ _____
Total Additional Income	\$ _____
C. Total Monthly Installment Debt Payments:	
1. Auto Payments	\$ _____
2. Student Loans	\$ _____
3. Credit Cards	\$ _____
Total Monthly Installment Debt Payments	\$ _____
D. Liquid Assets:	
1. Savings/Checking	\$ _____
2. Money Market/CDs	\$ _____
3. Securities/Bonds	\$ _____
4. Gifts from Family	\$ _____
5. Seller Concession	\$ _____
6. Other	\$ _____
Total Assets	\$ _____
E. Other Important Information (Type of property purchasing-co-op/condo/house)	
F. Estimated Purchase Price	\$ _____
G. Requested Loan Amount	\$ _____
H. Estimated monthly carrying charges:	
1. Real Estate Taxes	\$ _____
2. Common Charges	\$ _____
3. Maintenance	\$ _____

Once the purchaser has compiled this information, contact the loan officer/mortgage broker, who will quickly determine the maximum loan amount a bank will lend.

**Appendix C**  
**Notes on Premises Viewed**

1. Premises: \_\_\_\_\_  
Address: \_\_\_\_\_  
Asking Price: \_\_\_\_\_  
Bid Price: \_\_\_\_\_  
Common Charges/Maintenance: \_\_\_\_\_  
Real Estate Taxes (Condo/House): \_\_\_\_\_  
Financing: \_\_\_\_\_  
Size/Rooms: \_\_\_\_\_  
Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
2. Premises: \_\_\_\_\_  
Address: \_\_\_\_\_  
Asking Price: \_\_\_\_\_  
Bid Price: \_\_\_\_\_  
Common Charges/Maintenance: \_\_\_\_\_  
Real Estate Taxes (Condo/House): \_\_\_\_\_  
Financing: \_\_\_\_\_  
Size/Rooms: \_\_\_\_\_  
Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Premises: \_\_\_\_\_  
Address: \_\_\_\_\_  
Asking Price: \_\_\_\_\_  
Bid Price: \_\_\_\_\_  
Common Charges/Maintenance: \_\_\_\_\_  
Real Estate Taxes (Condo/House): \_\_\_\_\_  
Financing: \_\_\_\_\_  
Size/Rooms: \_\_\_\_\_  
Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_