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INFORMATION IN A NUTSHELL FOR THE FIRST TIME PURCHASER OF COOPERATIVES, CONDOMINIUMS AND ONE FAMILY HOMES IN NEW YORK CITY

By Linda G. Maryanov, Esq.

The purpose of this article is to familiarize you with the various aspects of a cooperative, condominium and one family home purchase in and around New York City. Some issues may or may not be applicable to your situation. This article is not intended to replace a comprehensive consultation with an attorney and other real estate professionals.

Determine location and what you can afford. It is generally not a good idea to shop "at the top of your range." Bidding wars mean you may quickly get outbid.

Unless you have a stash of cash sitting around, most people will need a mortgage. Generally, you will need a minimum of 10%-25% of the purchase price in cash towards the purchase price. In addition, there are many other fees and expenses. (More on this in a moment.) If you are buying a cooperative, the co-op boards dictate a maximum amount of financing permitted and often have an (official or unofficial) debt to income ratio permitted for purchasers in the building.

Get your tax and financial records in order for shopping. Check your credit score and credit report, and clean up any problems. It is common practice for people to obtain a mortgage or cooperative loan "pre-approval" before they begin shopping, so prospective sellers know that they are "*bona fide*." A pre-qualification is not the same as a pre-approval, as a pre-qualification merely says that **you say that you qualify** for a particular loan amount. A **pre-approval** demonstrates that a lender actually ran your credit score, evaluated your credit-worthiness and feels that you can theoretically carry a loan of a certain amount. A pre-approval does not pass judgment on whether the property you are interested in will appraise for the agreed purchase price and would support the loan desired, or if there is anything about the cooperative or condominium's financials that would dissuade a lender from lending in the building.

Familiarize yourself with current mortgage rates and what a particular rate will cost per month. With **fixed rate mortgages**, you know what the basic monthly payment is and will remain. With **adjustable rate mortgages**, you generally obtain a lower initial percentage, but take on the uncertainty of what the future increases may be. Adjustable mortgages ordinarily have a "cap," representing the highest possible percent your mortgage rate could be at any time during the loan period. Rates recently increased slightly, but are still fairly low.

With cooperatives, loans greater than 80% of the purchase price are currently uncommon, and some "fancy" buildings even require as much as (or more than) 50% cash down with a maximum of 50% financing.

Remember that the carrying cost on a mortgage is only part of your monthly expense. With a cooperative, there is also a monthly maintenance paid to the cooperative corporation, and with a condominium there are common charges and real estate taxes to be paid. Private homes also come with real estate taxes and homeowner's insurance, and the ever imminent prospect of a roof to be patched......

As a purchaser, if you are working with a **real estate broker**, be aware that the listing broker is **generally the agent for the seller**. The broker is paid by the seller and owes his or her allegiance to the seller. The broker is helping you find a home or apartment, presumably for the best (ie-lowest) price possible; however, the broker is also helping the seller sell their home, presumably for the best (ie-highest) price possible. A good broker is invaluable, and knows the local market. I recommend having a broker on your team. If you are not working with a buyer's ("showing") broker, you will not experience any savings. The seller's listing broker will receive the full selling commission, rather than splitting the commission with a purchasers' agent. The seller pays the commission, not you. Brokers are also invaluable in that they assist in negotiations and with preparation of the board package (in condominium and cooperative purchases).

Some people handle their own financing. Others work with mortgage bankers or mortgage brokers. They can be particularly helpful. Before you agree to a particular loan, be certain that you understand the **terms of your mortgage**. Specifically, be clear as to whether any "points" or application fees are payable, the rate of the mortgage, the term or duration of the loan, and any special requirements (ie- mortgage insurance). Do not **lock your rate** prematurely, as both commitments and rates expire. Particularly with a co-op purchase where you need board approval to proceed, the process usually takes longer than you expect. Closing does not always happen when you think it "should." To get a commitment or rate lock extension is sometimes as simple as submitting updated pay stubs and bank statements. **Rate locks** are generally in force for 30 to 60 days.

Be certain that your loan application is prompt, thorough and accurate. Be certain you have fully complied with all of your loan-related contractual obligations, so as to not be in default under your purchase contract. Often a lender will seek additional information, or issue a conditional approval, based upon their receipt of certain additional information and/or documentation. Keep abreast of things, and keep your attorney advised. In addition, expect to receive **a loan estimate,** detailing closing costs from the lender. Be aware- these are merely estimates, and should be discussed with your lender and lawyer. Some of the closing costs listed are also confusing, as they are not all purchasers' fees. Some of the fees listed on this form are sellers' fees.

If purchasing a cooperative or condominium, your attorney will perform "pre-contract due diligence" and will examine the books and records of the condominium or cooperative corporation. This is done before you sign the

purchase contract. Your lawyer will make sure that the financials are current and reflect solid management and operational standards. Is the building operating within its budget, or is it "ripe" for a maintenance or common charge increase or capital assessment? Your attorney will review the Board minutes (if they exist and are made available), ascertain how much stock the cooperative corporation still owns (if applicable), whether apartments are owner-occupied or leased to tenants, whether the proprietary lease and house rules contain any unusual provisions or restrictions, whether capital improvements have been made or deferred. Most times a review of the board minutes show nothing notable; occasionally the review opens up a proverbial "can of worms," and we are relieved that it disclosed some adverse situation we can avoid by not "going to contract." The whole purpose of the **"pre-contract due diligence"** is to determine if the building is a sound investment for you. It is not a rubber stamp.

Cooperative boards maintain strict control over sale and transfer of shares, so be certain that you agree with the building's ideology and can live with the rules and regulations. **With a cooperative purchase, and increasingly with a condominium purchase, you will be required to submit an extensive amount of information and documentation with your application package. Boards require that you have your actual loan commitment prior to submitting the application. With a co-op, expect a personal interview by the Board prior to approval**. After approval, it may take another 5-10 days (or possibly longer) to actually close the transaction.

Generally, if a co-op board does not feel you are a worthy purchaser, you will obtain a board "turn down" after submission of your package but before an interview. A co-op board can turn down your purchase for "any" reason, but just not an illegal reason. (ie-purchasers are rejected if they have too little liquid cash in the bank, or if they intend to give drum lessons out of the apartment. Years ago a former President was rejected by a cooperative board, with all assuming that the board did not want the Secret Service in the elevators....) It is rare (but not unheard of) that you will be interviewed AND THEN rejected; this would subject a cooperative board to discrimination allegation. If the board rejects the purchaser, your contract deposit is refunded. You are, however, still out all of the money you paid to your bank and any fee you paid to your attorney.

The written contract of sale defines your agreement with the seller. If something is not written in the contract, it is NOT a binding obligation for either party and if the contract is not yet signed, then it is NOT a binding contract, yet. The contract specifies the **time you have to obtain financing (usually 30-45 calendar days in the metropolitan area) and the proposed closing date (usually within 2 weeks to a month after the mortgage commitment is issued, or with a co-op purchase, within a month after the co-op loan is approved.)** Condominium sales are generally, but not always, subject to the condominium issuing a "waiver of first refusal." If this waiver is not issued and the "first refusal" is exercised, this means, theoretically, that the condominium can deny your purchase and instead buy this apartment at this price for the building. This happens infrequently, but it does occur. If it occurs, your contract deposit is returned. As with a co-op board turn down, you are still out all of the money you paid to your bank and any fee you paid to your attorney.

Be sure that the contract specifies all of the appliances that come with the purchase (ie-air conditioners, dishwasher, washing machine, ceiling fans, etc.)

The contract closing date is a target date only, and not engraved in stone. A contract in the New York metropolitan area ordinarily provides for a closing **"on or about" a particular date.** In fact, either seller or purchaser may get a 30 day adjournment of that date, as a matter of local real estate custom and practice. If a specific date is important for some compelling reason, the contract may be written with "time of the essence." However, if this is done, then a reasonable adjournment will not be possible. One should only agree to a "time of the essence" contract for very good cause.

With co-op purchases, it sometimes occurs that the Board has not (yet) approved the purchase and the loan (rate or commitment) is about to expire. **This is unfortunate, but you absolutely cannot pull out of a deal merely because your loan rate has expired.** You may need to extend your commitment, and this may cost additional money.

Ah, and this leads us into the next question- what if you get “cold feet?” Can you back out of a fully executed contract? Although there very few "loopholes," there are several scenarios where a buyer can get their contract deposit returned.

If the contract -whether it be for a condominium or co-op or a private home- is **subject to (contract reads “contingent”)** financing. The usual deal provides for a loan of 80% of purchase price, but could be less and always subject to building requirements and/or negotiation. If the apartment or private home appraises under the purchase price and the bank will not loan the amount specified on the contract, then the buyer can get out of the deal and get their money back. However, be aware- if you intended only a small loan, say 50% of the purchase price, then the bank would still loan the specified loan, and the deal would go forward. No loophole.

If the mortgage or co-op loan is declined by the lender, you get your contract deposit back. (You might have to prove that you made a prompt, thorough and truthful mortgage application, and you may need to show the actual “decline” letter.)

The craze has been for offers to be made "not contingent on financing," and then a low appraisal would be at purchaser's peril. This means you may apply for a mortgage, but your responsibility to close is deal is not contingent nor dependent on you getting a mortgage. For the seller’s perspective, the buyer comes up with the balance of the purchase price, or loses their contract deposit. No way out, unless there is a board turn down. Risky for the buyer. Very risky.

If a co-op board turns the buyer down, you get a refund of your contract deposit. (So you are thinking you will show for the interview in your pajamas or tell them you practice your drums at 3am, and get a turn down? Sorry, that’s bad faith.)

If the board issues a conditional approval (i.e.- permitting the sale to proceed but requiring that the buyer deposit a maintenance escrow equal to 2 yrs worth of maintenance), the buyer can get out of the deal and get their money back.

If the condo board does not issue the "waiver of first refusal," the buyer gets their contract deposit returned.

If a co-op board has not issued its decision by a certain outside date, the purchaser gets their money back. (Don’t count on this. It's a lengthy wait...)

In the New York City metro area, with private home purchases and up-end apartment deals, our buyers generally do any needed inspections **prior** to going to contract. Hence, any inspection that discloses a problem does so before the contract is signed. If a contract is fully executed and subject to a certain inspection, a problem with an inspection could, potentially, provide a way out of a deal.

"Cold feet" do not provide a mechanism to get out of a deal.

So, since you are moving forward with this transaction, you need to **get a comprehensive written estimate prior to closing as to what all of your closing costs will be. This was previously called a GOOD FAITH ESTIMATE. Recent banking law changes have now modified this process. Once a specific property has been identified, and it’s a “real deal,” the bank sends out the LOAN ESTIMATE.** These ordinarily include any **fees to your lender** (ie- points, application fees, appraisal fees, credit report fees, interest for the month in which the closing will occur), **legal fees** (you pay your lawyer, your bank's attorney and the co-op's attorney, where applicable). You are also responsible for **lien search (or title insurance for a condo)**, **liability insurance, document recording fees, interest and real estate tax escrows** (not applicable to co-op loans). Other costs include **your bank's appraisal and a processing or "move-in" fee**. New construction and “sponsor” deals have additional costs.

Even after board approval, you cannot close on your purchase unless and until the loan is **“clear to close”** from the lender’s underwriter’s perspective. Stay abreast of things and make sure you understand what issues are open and what is needed to close them out.

Do a final, thorough inspection just a day or two before closing. Bring a pencil and paper and go through the premises carefully. Operate all appliances. Notice if any windows are cracked, any leaks appear, if the personal property left is in good condition, as agreed. Move rugs and furniture, as they may be obscuring a problem. (Here’s the clincher- was that problem present when you signed the contract, but you just did not know it?) This is your last time to identify any problems that need to be addressed. Notify your lawyer immediately if you identify any issues.

Prior to closing you will be instructed to obtain one or more certified or official bank checks for the balance of the purchase price. (We generally do not permit closing by wire transfer for New York City residential transactions.) If you are buying a new construction condominium from a sponsor, you will also need to bring certified or official bank checks for the closing costs, which will include transfer taxes, the sponsor’s legal fees, a contribution to the working capital fund, and other costs. In addition, when buying a condo, your-title related closing costs for title insurance and other charges may need to be via certified or official bank funds.

At closing, be prepared to sign a hundred documents and write a hundred checks! (Just kidding, but it does feel like this.) **Bring two forms of current, valid photo**

identification, proof of your co-op owners/condominium owner's insurance and extra personal checks. (Your expired driver's license will not suffice!)

Linda G. Maryanov, Esq. is a partner in the firm of Zimmerman and Maryanov, with thirty years experience in the areas of residential real estate (co-operatives, condominiums, and private homes in Manhattan, Brooklyn, Queens and Long Island, including the East End) and wills, trusts, estate planning and estate administration.

Linda considers working with first time buyers to be one of her strengths, making sure you understand the process and timing of all aspects of the transaction.

A member of the adjunct faculty at the Baruch College Steven J. Newman Real Estate Institute, Linda is also certified by New York State to offer continuing legal education classes to fellow attorneys regarding pre-contract co-operative and condominium due diligence. Linda lectures frequently on these subjects, and has also written a number of articles for laypeople.

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