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RESIDENTIAL REAL ESTATE TRANSACTIONS:
WHAT A PURCHASER CAN EXPECT

Buying a home (whether it be a house, cooperative apartment or condominium unit) should be exciting, but it can also be stressful and overwhelming, especially if you are not prepared and do not know what to expect. Although every transaction is unique, this newsletter is meant to give a general overview of the process of buying a residential property.

The first step should be to honestly assess your financial status and determine a budget that considers the purchase price as well as your closing costs and needed improvements. There are many websites available online that will help you calculate your budget and monthly mortgage payments available to assist you with this step. Early on in the process you should find a realtor who specializes in the area where you want to live. The realtor can show you various houses, condominium units and cooperative apartments and can explain the costs and benefits to each type of ownership. You should see what is available and try to understand the market before purchasing. When purchasing a coop or condo, pay particular attention to the financial statements related to the property as the documents may reflect the financial health of the coop entity or condo association.

Once you find the property you want to buy, your realtor will help you make an offer to the Seller. Your offer will include the price you want to pay, and you may ask the Seller to include certain personal property in the sale and/or to make certain repairs or modifications to the property. Depending on the circumstances, you can make your offer contingent on obtaining financing and/or a satisfactory engineer's inspection of the home. The Seller may accept or reject your offer, or may counteroffer for a different price or terms.

If you and the Seller can agree on terms, the realtor will draft a "memorandum of purchase and sale" (also known as a "term sheet") that summarizes the agreed-upon terms. The realtor will send the term sheet to the attorneys for yourself and the Seller. Within several days from receiving the terms, the Seller's attorney will prepare a contract of sale and deliver it to your attorney for review. The contract should contain the agreed-upon terms and will outline the responsibilities and representations of both you and Seller. Shortly thereafter, the attorneys will discuss the contract terms with their clients and each attorney will negotiate the specifics in order to best protect their clients' rights.

At this time, a Purchaser who is seeking financing for the transaction should consult a mortgage broker and begin the loan application process. Many closings are delayed due to issues with the Purchaser's financing, so this is something you want to start early and closely track throughout the process.

Before signing the contract, you should conduct your due diligence with respect to the property. Due diligence includes reviewing the building department file for a valid certificate of occupancy, violations and/or open permits affecting the property, confirming the real estate taxes and utility costs. You should also consider conducting an engineer inspection which will check the electrical, mechanical, HVAC, plumbing and other systems, the roof and foundation, and for termites, radon and the existence of an underground oil tank. *(Continued on Reverse Side)*

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NEWSLETTER

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After the attorneys finalize the contracts, the Purchaser will review and sign the contracts first and make the initial down-payment (usually around 10% of the contract purchase price). The Seller generally signs within a few days after the Purchaser. Once all parties have signed and contracts delivered, the parties are legally bound to the terms of the transaction. At this time, the attorney for the Purchaser will order a title search to see what, if anything, appears of record that would affect title to the property. If a survey of the premises cannot be located, the attorney for the Purchaser may also order a survey to make sure there are no encroachments onto the property. Almost all contracts require a Seller to deliver clear title, so if any title issues are uncovered by the title search or survey, the Seller will be required to correct the title issues or refund the down-payment funds the Purchaser has paid. Purchasers are cautioned when buying properties owned by a bank (REO) or from a Seller in a short sale (which is when a Seller's mortgage is greater than the sales price), these contracts often provide that the Seller is selling the property strictly "as is" and as such the Purchaser may be taking title subject to open title or other issues.

During the time the parties are waiting for the title search to be completed, you should be in constant contact with your mortgage broker or bank loan officer to make sure the loan application is moving forward and to ensure that a mortgage commitment can be issued in the time frame allowed in the contracts. Generally, Purchasers have 30-45 days from signing contracts to obtain a commitment from their lender. Most loan commitments are issued with conditions that must be satisfied by Purchasers prior to the lender giving final funding approval. It is important that you and your attorney understand and address all conditions promptly.

Once your loan is cleared to close and the title to the property is clear, the parties will schedule a closing date and time that works for all the parties. Most residential transactions close within 60-90 days from contract signing, but timing depends on the facts and circumstances of the parties and each deal is unique. Once a closing is scheduled, the attorneys prepare closing statements to detail the closing expenses of their clients. Closing costs for a Purchaser include title charges, bank fees, attorneys' fees and varying other expenses depending on your situation. You should anticipate what may be thousands of dollars paid by the Purchaser and/or withheld from the bank proceeds to pay real estate taxes that will be due within 60 days from the closing and to fund the bank's escrow account to pay future real estate taxes on behalf of the Purchaser.

Prior to the actual closing you should contact your real estate agent to schedule a final walkthrough of the property. Be sure to inform your attorney if there are any new issues or problems with the property that come up during your walkthrough. If there are multiple purchasers, your attorney will also ask you how you will want to take title to the property in the deed to be signed by the Seller. At the actual closing itself your attorney will explain any documents required by your lender and confirm that you understand the terms of the loan you are entering into. Your attorney will also review the various transfer tax forms, deed, title charges and any other affidavits or forms required at the closing. Once all documents have been executed, checks related to the seller's proceeds and various closing costs exchanged and the keys to the property have been turned over by the Seller you will officially be the new owner of the property. The original deed will be recorded with the county clerk's office and should be returned to you within a few weeks time, but you should obtain a copy while at the closing table for proof of ownership until then. Following your closing, your attorney will prepare a closing package for you, complete with copies of all of the closing documents relevant to your purchase.

For more detailed information related to real property transactions including specific articles related to a Purchaser's due diligence and closing costs, please see our earlier Newsletters on our website at www.dibbinilaw.com/newsletters.php.

James G. Dibbini & Associates, P.C. has successfully performed thousands of residential real estate closings and we are familiar with a wide array of closing issues. We guaranty to provide you professional and prompt service on all of your real estate needs, and as your attorneys, our firm will make sure that you understand the process and costs involved throughout your transaction. For more information or to discuss the specifics of your situation, please do not hesitate to contact James G. Dibbini, Esq. at 914-965-1011 or jdibbini@dibbinilaw.com.

Our firm also provides legal services in the areas of:

- Commercial & Residential Real Estate Transactions
- Civil Litigation - Landlord & Tenant Matters - Lender Representation - General Business Law
- DHCR Representation - Tax Grievances & Certiorari - Wills, Trusts & Estates - Business Entity Formation