

**FULL SERVICE  
COMMERCIAL AND RESIDENTIAL  
REAL ESTATE ATTORNEYS**



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*This memorandum is intended to provide summary information and should not be construed as legal advice. Readers should seek specific legal advice before taking action with respect to matters discussed herein.*

## **Commercial and Residential Real Estate Law**

In our Real Estate practice, we have participated in over \$1 billion of transactions in commercial and residential real estate involving both the US-based as well as international corporate entities and individuals.

Our Commercial Real Estate practice covers all aspects of commercial and corporate transactions, commercial leasing, business law, tax law and commercial financing. We have on-going relationships with a number of real estate developers and corporate clients, including number of global real estate holding companies, multi-state developers of retail strip malls, and some of the largest developers in New York and New Jersey area.

We work with each commercial real estate client, foreign or domestic, to structure the appropriate entities in consultation with the client's accountants and financial advisors and negotiate the transaction on the most favorable available terms. Our global Real Estate expertise extends across almost every asset class in the United States and most European countries. We have built a worldwide network of business relationships, and can assist our clients in executing transactions in many countries and jurisdictions.

We frequently work with clients on the purchase and sale of large and small commercial as well as mixed-use properties. We also represent both builders and land developers who range in size from small residential builders to large multi-million dollar builder developers who are simultaneously involved with dozens of projects. Whether it is sale and purchase agreements, title issues, tenant lease agreements, distressed businesses, financing and finance contingencies, or entity formation for real estate ownership, we give each client individual attention for each unique situation.

We also have a detailed knowledge of the intricacies of transactions by international buyers and sellers, including the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), as well as transactions involving 1031 Tax Deferred Exchanges.

Our Residential Real Estate practice handles a full range of residential real estate issues, including sale and purchase transactions and residential leases for all types of properties, including single and multi-family houses, cooperative apartments, condominiums, buildings and vacant land. Our offices handle hundreds of residential sale and purchase transactions each year. We understand that real estate transactions can be confusing and frustrating for all parties involved and we will work hard to ensure a smooth closing process. We are committed to excellent client service and have built excellent reputation in the New York and New Jersey areas. Our dedicated staff always stays up-to-date with the new regulatory requirements.

### **Why do you need an attorney for your real estate purchase?**

Do I need a lawyer? I can buy an automobile or 100 shares of stock without a lawyer. Why not a one or two family home?

Buying a home may not only be the most significant and largest purchase you will make, it also involves the law of real property, which is unique and has special problems. A lawyer is trained to deal with these problems and often has the most experience to deal with them. This applies to people selling a home or buying a home.

In the typical home purchase transaction the seller enters into a brokerage contract with a real estate agent, which is usually in writing. When the broker finds a potential buyer, negotiations are conducted through the broker, most often acting as an intermediary. Once an informal agreement is reached, buyer and seller enter into a formal written agreement. The buyer then obtains a commitment for financing. Title is searched to satisfy the lender and the buyer. And finally, the property is transferred from the seller to the buyer and the seller receives the purchase price bargained for in the contract. Seems simple and uncomplicated, but, without a lawyer, the consequences may be more disastrous than purchasing a car that turns out to be a lemon, or a stock investment that was unwise.

## **What are some of the reasons why you need a lawyer for a home purchase or sale?**

**Dealing with the Broker.** A seller without the advice of a lawyer, may sign a brokerage agreement that does not deal with a number of legal problems. The seller may become liable to pay a brokerage commission even if a sale does not occur or to pay more than one brokerage commission. For example, does the agreement offer the seller the right to negotiate on his or her own behalf; what is the effect of multiple listings; what are the broker's rights if the seller withdraws the property from the market, or can't deliver good marketable title; how long should an exclusive listing last? The seller should have the advice and guidance of an attorney with respect to a brokerage agreement. Even if the agreement is a so-called "standard form", its terms should be explained to the seller and revised, if necessary. An attorney is also necessary to determine if the agreement was properly signed.

**Dealing with tax consequences and other issues.** Even though a lawyer may not be needed during the course of negotiations, the buyer and seller each may have to consult with a lawyer to answer important questions, such as the tax consequences of the purchase or sale. To a seller, the tax consequences may be of critical importance. For example, what are the income tax consequences of a sale, particularly if the seller has a large profit . . . will the seller be able to take advantage of the tax provisions allowing for exclusion of capital gains in certain circumstances?

Aside from the tax consequences, the buyer and seller may have questions about the date set for closing, the date of occupancy, the condition of the property, arranging for an inspection and what personal property is included in the sale. These are some of the many questions that may need to be considered during the negotiation stage in order to avoid disputes when a written contract is prepared.

**Dealing with the contract of sale.** The formal written contract for the sale and purchase of a home is the single most important piece of paper in the transaction. Its importance cannot be overestimated. Although printed forms are useful, a lawyer is once again necessary to explain the form and make changes and

additions for a particular transaction to reflect the understanding of the buyer and the seller. There are many issues that may need to be addressed in the written contract. For example, how should title be taken: individually, as tenants in common, joint tenants or tenants by the entirety. What happens if someone dies before title is transferred? The answers to these questions require the training and knowledge of a lawyer.

There are numerous other legal questions that must be addressed in the contract, including the following. If the property has been altered or there has been an addition to the property, was it done lawfully or may what is planned for the property by the buyer be done lawfully? What happens if a buyer has an engineer or architect inspect the property who finds termites, asbestos, radon or lead based paint? What if the property is proximate to a hazardous waste dump site? What are the legal consequences if the closing does not take place and what happens to the down payment? Will the down payment be held in escrow by a lawyer in accordance with appropriately worded escrow instructions? How is payment to be made? Is the closing appropriately conditioned upon the buyer obtaining financing? These are only a few of the many questions that arise with respect to a contract.

**Arranging for financing.** Most buyers finance a substantial portion of the purchase price for a one or two family home with a mortgage loan from a bank or other lending institution. The contract should contain a carefully worded provision that it is subject to the buyer's obtaining a commitment for financing. Printed contract forms are generally inadequate to incorporate the real understanding of the buyer and seller without changes being made. In addition, there is now an extensive and often confusing menu of mortgages that may be available. Fixed rate mortgages versus adjustable rate mortgages and the complexities of each require the knowledge of an attorney who is familiar with current mortgage lending practices. Mortgage loan commitments and mortgage loan documents are also complex. Lawyers are necessary to review and explain the importance of these various documents. Buyers should know when and if they can prepay their mortgages; what happens if they make a late payment; how is interest computed; how much insurance does the lender require; how are real

estate tax payments computed and collected and the answers to a myriad of other questions that may arise. Moreover, when dealing with the lender, although there is little room for negotiation, there is a need for the general assistance of a lawyer at the very least to explain what is happening and its consequences.

**Searching and insuring title.** After the contract is signed it is necessary to establish the state of the seller's title to the property to the satisfaction of the buyer as spelled out in the contract. Generally, a title search is ordered from an acceptable abstract or title insurance company. Assuming you are in an area where title insurance is customary, who will review the title search and explain the title exceptions as to what is not insured? Is the legal description correct? Are there problems with adjoining owners or prior owners? What is the effect of easements and agreements or restrictions imposed by a prior owner? Can I build a swimming pool or tennis court? Can I conduct a business in a spare room? Will there be any legal restrictions that will impair my ability to sell the property? Can the utility company build a high tension transmitter in the back yard? It should be clear that the guidance and advice of a lawyer can avoid a very costly mistake.

**Checking out the zoning.** The title search does not tell the buyer or seller anything about existing and prospective zoning. Does zoning prohibit a two family home? Does the deck you are planning violate zoning ordinances? There are invariably some questions that will require you to call upon a lawyer for the most direct and efficient response to your inquiry.

Reviewing the survey. Finally, there is the necessity of having a survey map of the property, which is a necessary adjunct to a title search. A lawyer is trained to review this survey, which may give rise to future problems. For example, your neighbors' fence or driveway may encroach upon your property or vice versa. A garage may have been built on a municipal street. Should you accept title? Will a lender give you a mortgage with these encroachments?

**Conducting the closing.** The closing is the event which is the "moment of truth" of the purchase and sale transaction. The deed and other closing papers must be prepared. Title passes from seller to buyer who pays the balance of the purchase

price. Frequently, this balance is paid in part from the proceeds of a mortgage loan. A closing statement should be prepared prior to the closing indicating the debits and credits to buyer and seller. An attorney is helpful in explaining the nature and amount of closing costs. Final documents including the deed and mortgage instruments are signed. An attorney is necessary to assure that these documents are appropriately executed and explained to the various parties.

The closing process can be confusing and complex to the buyer and seller. Those present at the closing often include the buyer and seller, their respective attorneys, the title closer (representative of the title company), attorney for lending institution and real estate broker. Documents need to be recorded; various transfer taxes need to be paid, and provisions for insurance and other incidents of ownership need to be concluded. There may also be last minute disputes about delivering possession and personal property or the adjustment of various costs, such as fuel and taxes. Here a lawyer's advice and guidance is essential.

**Condominiums, cooperatives and HOAS.** Special mention needs to be made about condominiums, cooperatives and homeowners associations. These involve forms of ownership that are treated as securities under New York State law and require special documents that are complicated and should be reviewed by an attorney. Condominium declarations, proprietary leases, and by-laws are but a few of the complex documents confronting buyers of these forms of property ownership. The tax deductions and consequences with respect to the purchase of a condominium or cooperative also need to be explained by a professional that is familiar with these common ownership forms.

It is obvious that throughout the process the interests of the buyer and seller will conflict. The broker generally serves the seller, and the lender is obtained by the buyer. The respective lawyers for buyer and seller will have no such conflicting loyalties and will serve only their clients' best interests.

A lawyer's advice and guidance is essential from the time you decide to sell or to buy a home until the actual closing.

## THAT'S WHY YOU NEED A LAWYER.

*Above article is published by the New York State Bar Association. The article, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney.*

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## **New York City Real Estate Law for Foreign Buyers**

New York City has provided valuable and in-demand real estate for foreign buyers for a number of reasons, including its prime location as one of the world's centers for culture, arts, and commerce. Real estate in New York City continues to be an attractive option for foreign buyers today as demand remains high while supply is limited. International buyers often have multiple questions about purchasing real estate in New York, including closing expenses, taxes and the differences between various property types.

### **Various property types in New York City**

The New York City real estate market offers multiple property types, including single family houses, multi-family houses, coop, condos, and townhomes. While real estate brokers will generally explain the differences among the properties, buyers have to understand legal rights and differences among the property types. Please contact our offices for a legal consultation for a specific property.

### **Condominiums**

Condominiums represent one of the most popular options for foreign buyers in New York.

- **Definition.** The basic concept of a condo is that the buyer owns the apartment and shares the common areas with the other building residents.
- **Board approval.** Every buyer has to pass the approval of the board, which is made up of residents who make all decisions about the building (such as rules, repair, and budget). This process is not as complicated as in co-ops (see below) and is often a formality.
- **Minimal Restrictions.** Condos often impose minimal restrictions on their tenants as far as ownership or use; sub-letting, part-time residence, and other options are generally allowed, unlike in co-ops.
- **Market price premium.** Condos are generally more expensive than co-ops but tend to be represent a more convenient option for foreign buyers.

## Co-ops

Co-ops present a large number of options, as over three quarters of Manhattan real estate is composed of co-ops. Co-ops can be the perfect primary or part-time residence, while not suited to investors.

- **Definition.** The basic concept of a co-op is that a buyer buys shares in the building and shares the common areas with the other building residents.
- **Board approval.** Every buyer has to pass the approval of the board, which is made up of residents who make all decisions about the building (such as rules, repair, and budget). Obtaining the approval of the co-op board, which can be extremely difficult even for United States citizens, is even more complicated for international buyers. Many boards may have strict residency and income requirements. Co-op boards often want their shareholders to work in New York, have a nearly perfect credit rating in the United States, and to have a United States tax return, which poses the most significant problem for foreigners. The approval process can be lengthy and can take weeks.
- **Significant restrictions.** Co-op restrictions can have very specific regulations on the usage, the number of guests they are allowed, financial position of the buyer, and even the mortgage amount. In many instances, the board can require a substantial down payment and proof of funds. Co-ops also generally have very stringent restrictions on renting it out to others, which may not be attractive for some foreign investors. In addition, some co-op board may require a “flip tax,” which is a payment to the co-op board in order to be granted permission to sell.
- **Market price discount.** While co-ops are generally priced lower than condos, their monthly expenses, such as maintenance, real estate taxes, and utilities, could be higher.

## Expenses for New York Property Owners

No matter what option for New York property ownership one selects, there will be additional expenses associated with the purchase, often called “closing costs”,

as well as expenses associated with the carrying charges. Such expenses include real estate taxes, co-op maintenance fees, condo monthly common charges, among others. These charges can range from hundreds to thousands of dollars per month. The better amenities a building has, the higher the fee is. Buyers should remember that some of these charges can be tax deductible. While many of these expenses may be listed in marketing materials, it is the buyer's responsibility to make sure they are correct. Our office independently verifies these points to ensure that buyers interests are protected. Importantly, in many cases we are able to obtain planned cost increases and identify financial issues with particular buildings (which may lead to unplanned cost increases, such as higher maintenance and common charges).

