

THE FPTR NEWS

"... useful information for clients and prospective clients."

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What You Should Know About Buying And Selling A Home

Real estate issues dominate the headlines: collapse of the sub-prime market, mortgage fraud, and price declines. Many experts believe, however, that now just might be the time to buy. This article addresses the basics of real estate transactions from contract to closing.

Inspections and Contract Formation

Critical to any contract to sell or buy a home is the home inspection, which is generally conducted by professionals to ascertain whether there are any structural defects in a dwelling. New York and New Jersey differ on the issue of inspection and contract formation. In New York, home inspection issues are resolved before the Contract of Sale is signed. In New Jersey, the contract is typically executed first, and your attorney has three business days to review the contract, make changes, or to terminate the contract. Within ten days after Contract approval, the inspection is usually performed and, if defects are found, a demand for corrections is served upon the Seller. After Buyer's concerns are addressed, the Contract becomes binding.

Contract negotiation is crucial and an experienced attorney is necessary as virtually every aspect of the Contract is negotiable by Buyer and Seller. After the Contract is approved, in New Jersey, you will be required to post the balance of your deposit (usually 10% of the purchase price) within a short time. In New York, the full deposit is usually due when the Contract is signed. The deposit is generally refundable if a contingency is not met, e.g. failure to obtain financing. If the Buyer breaches the Contract, however, the deposit may be lost as "liquidated damages."

Financing

The financing decision is as important as the decision to buy a home. A Conventional Loan is a

home mortgage that requires a sizable down payment (20%) and is not insured (e.g., private mortgage insurance - PMI) or guaranteed by a government-sponsored entity. The most common are the Fixed Rate Mortgage, where the interest rate stays the same for the loan term, and the Adjustable Rate Mortgage (ARM), where the interest rate fluctuates during the term of the loan. There are also Convertible, Buy Down, Bi-Weekly, and Balloon Mortgages. An attorney can help explain the advantages and disadvantages of each type.

Be Aware of Closing Costs

The Contract will set a Closing Date on which the rest of the purchase price is paid and title is transferred. Many buyers are surprised at the actual cost to close when they arrive at the closing table. While the mortgage company will supply a Good Faith Estimate of closing costs, the typical buyer will need more cash to fund escrows for taxes and insurance and the first month's mortgage payment. A buyer's other closing costs may include loan origination fee, discount points, application fee, appraisal fee, document preparation fee, title insurance premium, attorneys' fees, survey fee, capital reserve (for condos), maintenance fee (for condos and coops), mortgage interest (covering the time before the first payment), mortgage tax (in New York), and mansion tax (in New Jersey for purchases over \$1,000,000). A seller's typical closing costs include the mortgage payoff, real estate commission, attorneys' fees, and transfer taxes/stamps. Certified funds are required to pay these costs.

Title Insurance

Every purchase with a mortgage typically requires new Title Insurance to make sure you receive what you purchase. The Title policy will describe the dimensions of your property and insure

against someone else claiming it. There are two types of title policies, a Fee Policy, which protects you, and a Loan Policy, which protects the Lender. Title insurance fees are regulated by law and are not open to negotiation.

Condo/Coop Considerations

A condominium is housing where the owner owns only the unit in which he or she lives and a portion of the common area. A cooperative apartment is a form of individual ownership in a multi-unit building, i.e., one buys shares in a coop corporation, which owns the building, and generally receives a proprietary lease in return. Only an attorney may draft a "Cooperative Contract."

Condos and coops are treated like real property in both New York and New Jersey. The rules and regulations of the Condo Association and Coop Board, however, add another dimension to the buy/sell decision. For example, the Condo Association may have the right of first refusal to buy the unit in question and require payment of a one-time charge to the capital improvement fund at Closing. Coop Boards typically must approve your purchase of shares in the Coop and any person to whom you may wish to sell your shares. Both have varied rules and regulations regarding what you can do in the living space and in the common areas; a buyer should be familiar with them so as to avoid disappointment. On the bright side, the title and property insurance issues for condos and coops are often far simpler (and sometimes cheaper) to handle.

Other Considerations for Sellers

When selling your home, the impact on your personal taxes should be considered. Capital gains

taxes may be due but can be avoided when the gain is under \$250,000 for individuals, \$500,000 for married couples, and you never used your home as rental property. Two-family house owners also face the need to apportion gains between the residence portion and the income-producing portion. Your attorney or accountant can help you decide the appropriate apportionment, make use of available credits, and explain the advantages and disadvantages of an IRS 1031 exchange of the income-producing property that could defer capital gains taxes.

Conclusion

Buying and selling a home is probably the biggest financial decision of your life. Competent legal counsel and financial advice is critical at the onset of the transaction and throughout the process until the final closing. - *Joel J. Reinfeld*

For more information or to learn about our law firm's services and experience, see our website at www.fpmtlaw.com or call telephone number (201) 569-5959 and ask to speak with one of our partners:

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