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**A PRACTICAL GUIDE TO BUYING A CO-OP OR CONDO**  
**(THINGS YOU SHOULD KNOW AND MISTAKES TO AVOID)**

**BY BRUCE A. CHOLST, ESQ.**

**I. INDRODUCTION**

- A. The necessity of looking beneath surface appeal before deciding to purchase apartment.
- B. Role of attorney in the purchase of an apartment.
- C. General considerations regarding Closing Process.

**II. DUE DILIGENCE**

- A. Purpose
- B. Aspects of Due Diligence Search
  - 1. Threshold Issues (Direct Impact on Deal);
  - 2. Carrying Charge Issues (is increase in foreseeable future likely?);
  - 3. Potential "Time Bombs" (possible long term problems).
  - 4. General Financial Issues.
  - 5. Quality of Life Issues

### **III. CONTRACT REVIEW AND NEGOTIATION ISSUES**

- A. Significance of Tendering Downpayment
- B. Mortgage Contingencies
- C. Board Approval Contingencies
- D. Alteration/Combination Contingency
- E. Lead Paint Inspection Contingency
- F. Time of Essence Provisions
- G. Seller's Pre-Closing Repair Responsibilities
- H. Personal Property Included or Excluded from Sale
- I. Pre-Closing Access
- J. Possession Agreements

### **IV. LIEN/TITLE SEARCH**

- A. Purpose and Necessity

### **V. MORTGAGE DOCUMENTS**

- A. Conditions of Commitment
- B. Hidden Closing Costs
- C. Penalties for Default/Acceleration Clause
- D. Expiration and Lock-In Deadlines

### **VI. BOARD APPROVAL PROCESS**

- A. Right of First Refusal in Condominiums

### **VII. CLOSING ISSUES**

- A. Pre-Closing Inspection
- B. Powers of Attorney
- C. Adjournments

D. Activities at Closing

1. Closings within Closings – Closing *vis* Association; Closing *vis* Bank; Closing *vis* Seller.
2. Adjustments and Credits

E. Closing Statements

**VIII. COMPARISON: CO-OPS VS. CONDOS**

- A. Transferability – Easier in Condos
- B. Rules – More relaxed at Condos
- C. Neighbors' Arrears – More of a Problem in Condos than Co-ops

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**VARIOUS STAGES OF THE CLOSING PROCESS**

**BY BRUCE A. CHOLST, ESQ.**

- I. PRE CONTRACT DUE DILIGENCE
- II. CONTRACT REVIEW AND NEGOTIATION ISSUES
- III. LIEN/TITLE SEARCH
- IV. FINANCING
- V. BOARD APPROVAL PROCESS
- VI. PRE CLOSING ACTIVITIES
- VII. THE CLOSING

YOUR HOME

## Passing A Co-op Interview

By JAY ROMANO

**F**OR Benjamin Lee, an 89-year-old resident of Florida, the experience was harrowing. Mr. Lee and his son, on a visit to New York City earlier this year, were summoned to a meeting.

"I'll never forget it," Mr. Lee said. "We were led up to a kind of storage space. There were two men sitting at a table. Behind the table was a curtain. A third man came into the room, turned on a tape recorder, and then started asking me about my income tax. It was like a Star Chamber."

The Lees were not in town for a tax audit. They had come to New York for an interview with the admissions committee of a co-op, a relatively commonplace event that many aspiring shareholders find stressful and, at times, frustrating.

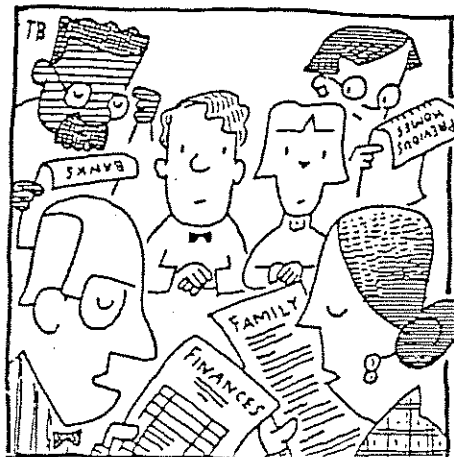
"The admissions interview is the culmination of the admissions process," said Mary Ann Rothman, executive director of the Council of New York Cooperatives. "Different buildings operate in different ways."

Under the bylaws of nearly all co-ops, shareholders have an almost sacred right to decide whom they will accept as partners. (And it is the general rule that the co-op may grant or withhold consent for any reason or for no reason, except that a denial cannot be based upon discrimination.) Accordingly, prospective shareholders are typically required to submit an application for admission that gives details about their finances, personal history and lifestyle, sometimes with extreme specificity. Then, if the applicant passes muster on the paperwork, he or she is invited to meet the admissions committee face to face for the final cut.

Indeed, Ms. Rothman said, most admissions committees strive to make prospective shareholders as comfortable as possible by conducting interviews in a cordial,

businesslike manner. And in many cases, she said, the scheduling of an interview is a pretty good sign that the committee is already satisfied with the paperwork submitted by the candidate.

Still, even the most self-assured aspiring



Tom Bloom

Expect a certain lack of privacy in the process. It's just part of joining the co-op club.

shareholder would probably prefer an afternoon in the dentist's chair to a half hour in the hot seat for an admissions interview.

Here, then, are some tips to help make it a relatively stress-free, successful experience.

"People need to be prepared for a certain lack of privacy," said William Hunt, co-president of Hunt Kennedy, a real estate firm in Manhattan. "Many people who have gone through this process resent that, but it's just part of joining the club."

Mr. Hunt said it was important to be able to substantiate all information included on the admissions application and any financial statements that accompanied it. In addition, he said, applicants should not assume that just because a mortgage company has said it will provide a shareholder loan, the board will be satisfied that the prospective shareholder's cash flow is adequate.

"Co-op boards are far more stringent than banks," he said.

Dennis Greenstein, a Manhattan lawyer who represents co-ops and condominiums, said that in addition to being ready for a thorough grilling on finances, applicants

should be prepared to disclose personal aspects of their lives.)

"The board can ask anything from where your kids go to school to where you're going for vacation this summer," Mr. Greenstein said, adding that most boards will also want to meet and interview every person who is

going to live in an apartment, including Fido. "And I always tell my clients that this is not the time to fudge anything."

Gordon C. Dixon, board president of a 562-unit co-op at 142 West End Avenue, said the interview was an opportunity for the board to size up a prospective shareholder to determine what kind of neighbor he or she would be.

"Character is important," Mr. Dixon said. "We want to make sure that people can get along with others and respect others. Sometimes couples come in and start bickering with each other, and you wonder if they really want the apartment after all."

Applicants should dress appropriately, he said, and perhaps even dress up a bit. "And never, ever, contact board members individually," Mr. Dixon said. "Go through the managing agent."

Bruce Choltz, a Manhattan real estate lawyer who served for seven years on the admissions committee for his own building, said that what he looked for in a prospective shareholder was an indication of "reliability, competence and a willingness to adhere to rules and regulations."

Projecting that image, Mr. Choltz said, begins before the board interview. "One of the criteria I looked at is how meticulously a person filled out his application," he said. "Does he omit stuff? Does he cross out stuff? Is it a haphazard application?"

On the other hand, Mr. Choltz said, "If a person is too precise, he conveys signs of being neurotic, and boards don't want neurotics because they often become troublesome shareholders."

What boards do want, he said, is someone who will "fit" in the building. "I think a candidate should express a willingness to volunteer for service on the board or one of the committees," he said. "Boards love to hear that."

And if it appears that the board believes your finances are borderline, Mr. Choltz said, "you might offer to pay a half-year or a year's mainte-

nance in advance."

Much advice culled from the experts centered on what should and should not be said during an interview. Mr. Cholst said it was wise for a couple being interviewed to try to anticipate what would be asked and decide in advance which questions each would answer.

"And you should avoid asking questions about pets and sublet policies," he said. "If they don't bring it up, then you don't bring it up either."

Mr. Hunt, the real estate broker, offered a similar strategy. "Speak only when spoken to," he said.


"Board members can be moody just like the rest of us. It's their building, so let them run the show."

And Mr. Cholst's admonition regarding subletting, it seems, is on target. "The one thing we don't like is people who come in and intend to sublet," said Sheldon Palmer, vice president of the board at 201 East 37th Street in Manhattan. "If it's a husband and wife about to have a child and they're buying a studio, or if it's a couple who have another residence they plan on keeping, that's when my antennae go up."

Indeed, Mr. Lee, former chief surveyor for New York City, may have raised some antennae during the interview when he told the board that he and his wife expected to live in the apartment for part of the year and then allow their two granddaughters to use it while they were in college.

Or perhaps, as Mr. Lee suspects, the board simply decided that the price he was paying for the apartment was too low.

In any case, it is doubtful that Mr. Lee will ever find out why his purchase was ultimately rejected. Because when a co-op board says "yes" the applicant doesn't need an explanation, and when it says "no" it is not required to give one — and usually doesn't. ■

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## Real Estate | Naples Daily News

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# Surprise! The price may grow

Sunday, May 21, 2000

By JAY ROMANO, New York Times News Service

NEW YORK — Home buyers know that they are often required to pay several thousand dollars in closing costs to complete the deal. But while the types and amounts of those costs are usually predictable, real estate experts say that buyers of apartments in New York City — particularly when the apartment is in a recent conversion or a newly constructed building — may be in for some unpleasant surprises.

"It's quite easy to see your costs for purchasing in a conversion jump \$15,000 to \$30,000 over what you expected to pay," said Stephen Kliegerman, director of downtown sales for Halstead Property Co. in Manhattan.

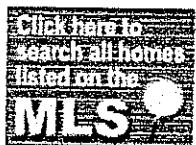
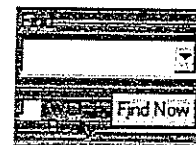
Kliegerman said that in most cases, the increased costs come from the fact that developers and sponsors often include provisions in the contract or the offering plan making the buyer pay real-property transfer taxes to the city and the state.

In a typical transaction, he said, the buyer is expected to pay costs that may include the buyer's lawyer's fees, mortgage-application fees, mortgage points, property-appraisal fees, document-filing fees, hazard-insurance premiums, title-insurance premiums, pest-inspection charges, surveyor's fees, overnight-delivery fees and other charges and taxes.

And while brokers and real estate lawyers are generally able to provide clients with a fairly accurate estimate of what the charges will be, Kliegerman said, there are times when even the experts fail to advise their clients about the costs that can be associated with buying an apartment in a recently converted or newly constructed building.

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The New York state transfer tax, Kliegerman said, is \$2 for every \$500 of the gross purchase price. The New York City transfer tax, he said, is 1 percent of the purchase price for properties sold for \$500,000 or less, and 1.425 percent of the entire purchase price for properties that sell for more.

In a standard residential real-estate transaction, he said, the seller pays both taxes. In transactions involving new conversions or new construction, he said, the sponsor or developer almost always passes the costs along to the buyer.

"There's just no avoiding these cost pass-throughs," Kliegerman said, adding that while virtually all elements of a real estate transaction are negotiable, developers and sponsors typically insist that buyers agree to pay the state and local transfer taxes. "It's one of the realities of the tight supply and huge demand in today's real estate market," he said.

Kliegerman said that with many new condominium apartments in Manhattan selling for upward of \$1 million, the transfer taxes could be substantial. The state and city transfer taxes on an apartment that sells for \$1 million, he said, would amount to \$4,000 and \$14,250 respectively, a total of \$18,250.

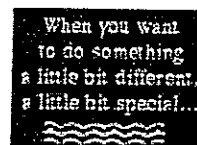
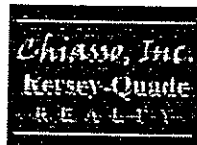
"The better brokers and lawyers counsel their clients about this so they can figure the extra costs into their budgets," Kliegerman said. "But stories of buyers getting really upset when they hear about these costs for the first time right before the closing are fairly common."

Stanley Simon, a Manhattan real estate lawyer, said that another traditional seller's cost that is passed along to the buyer — again, primarily in new construction and new conversions — is the seller's legal fees.

"The buyers can always say to the seller: 'You can pay your own legal fees,'" Simon said. "But then the seller can then turn around and say: 'Well, then, I'll just have to find another buyer.'"

An even more frustrating experience for some buyers, he said, is not finding out until just before the closing that the buyer is paying the seller's lawyer.

"I've seen cases where lawyers who represent buyers in a



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new conversion apparently never read the fine print that requires the buyer to pay the legal fees of the sponsor," Simon said, adding that such fees can be as much as \$1,000.

Less expensive, but just as frustrating, he said, are various "nuisance" fees that buyers are sometimes required to pay according to the terms of many sponsors' and developers' contracts.

"One thing you see a lot are extra fees for holding the closing anywhere other than the sponsor's lawyer's office," he said, explaining that such a charge can range from \$250 to \$600, and sometimes even more. "And the charge is imposed even if the closing is just two or three blocks away."

Another fairly common provision in contracts for condominium units in a new building or a new conversion, Simon said, requires the buyer to use the sponsor's title company or pay the sponsor an additional \$200 or so.

"The reason for that provision is that the title company that handled the conversion is familiar with all the legal issues relating to the property," he said, explaining that if a different title company is used by the buyer, the sponsor or his lawyer will have the extra work of providing documents and explanations that have already been given to the sponsor's title company.

Bruce Cholst, a Manhattan co-op lawyer, said that even sellers of existing apartments are starting to try to pass along to buyers at least some of the costs of the sale.

"The first thing that comes to mind are flip taxes," Cholst said, explaining that some co-op proprietary leases require a shareholder who is selling an apartment to pay a specified amount to the co-op corporation upon the sale. "The standard flip tax is calculated as a percentage of the sale price," Cholst said. "And I've seen flip taxes that amount to tens of thousands of dollars."

And while the buyer has no legal obligation to pay the flip tax imposed on the seller by the co-op, he said, more and more sellers are trying to pass the cost along to the buyer as a condition of the sale.

"Whether the buyer agrees to the seller's terms usually depends on the existing market conditions and the general

anxiety level of the buyer," Cholst said. "And in today's market, buyers are pretty anxious."

Notwithstanding such anxiety, it may still pay for a buyer to leave the bargaining in the hands of his lawyer.

"Most sellers want you to think that these kinds of clauses are non-negotiable," Simon said. "But if a lawyer is any good at haggling, he might still be able to save his client enough money to cover his own legal bill."

**Also in this week's Real Estate section:**

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## **PAYMENT OF PURCHASE PRICE AT CLOSING**

### **ASSUME:**

- (a) Purchase Price = \$200,000
- (b) 10 % Contract Deposit (\$20,000)
- (c) 80 % Financing (\$160,000)
- (d) Bank Closing Costs = \$2,000

### **TOTAL DUE SELLER EXCLUSIVE OF CONTRACT DEPOSIT:**

\$180,000

Bank Pays : \$158,000 (Loan Amount less Bank's Closing Costs)

Purchaser Pays: \$22,000

Purchaser also pays incidental closing costs, such as his own attorney's fees, building fees, adjustments (if any are owing to Seller) and unanticipated fees (if any).

Purchaser *receives* any adjustments that might be owing from Seller in his favor.