A GUIDE TO PURCHASING A HOME IN NEW YORK

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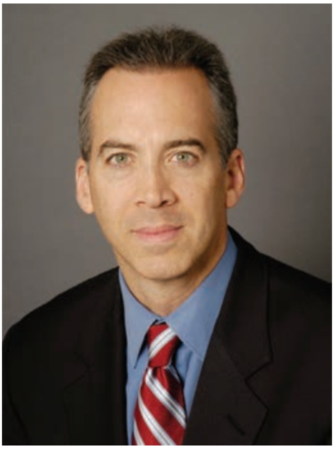
About the Author



Keith Schuman is a graduate of University of Pennsylvania and Cornell University Law School. He has extensive experience in transactional real estate work.

Keith specializes in the purchase and sale of condominium and cooperative apartments and single-family homes and represents real estate developers, owners, operators, purchasers, and sellers of commercial and residential properties. He also represents landlords and tenants in commercial lease transactions, borrowers and lending institutions in commercial and residential financings, boards of cooperative and condominium buildings, and sponsors in the development of residential cooperatives and condominiums.

Keith is the author of *A Guide to Purchasing a Home in New York*, a complete and concise overview of the home buying process and has written many articles on real estate matters. Keith developed the Schuman & Associates Lecture Series and is a frequent guest lecturer for New York real estate brokers. Keith Schuman is a New York State Certified Real Estate Continuing Education Instructor. In addition to the Lecture Series, Keith also offers New Agent Training.

About Schuman & Associates

Schuman & Associates LLC, established in 1988, is a full service real estate law firm providing services to its clients throughout all aspects of their real estate legal transactions. Schuman & Associates real estate lawyers handle the complete range of residential and commercial real estate legal matters, including assisting clients with purchasing and selling cooperative apartments, condominiums, brownstones, single-family houses and multi-family buildings. Schuman & Associates also provides real estate legal services in regard to purchasing, selling, leasing, or subleasing retail, commercial, and industrial properties. Additionally, the real estate law firm of Schuman & Associates offers assistance to its clients in forming limited liability companies and partnerships, handles I.R.C.1031 "Tax Deferred" Exchange Transactions, and provides real estate legal services to co-op boards, lending institutions, and managing agents in connection with apartment sales, management contracts, and building finance issues.

Personalized Service

Schuman & Associates LLC, a Manhattan real estate law firm, is dedicated to helping our clients achieve their goals with experienced real estate legal counsel and a personal hands-on approach. Schuman real estate attorneys work with our clients to explain every detail involved in their particular real estate transaction. Our real estate attorneys and staff are strong advocates for our clients and strive to make your deal as smooth and stress free as possible.

Schuman real estate attorneys make it our business to be well informed, so that we can keep our clients informed. As caring legal real estate counsel, we are particularly sensitive to the needs of first-time buyers and pride ourselves on being a calming influence in the buying and selling process.

Schuman & Associates is well known in New York real estate as a real estate law firm with experienced and talented attorneys who take the time to build relationships with clients and with real estate brokers through professional, personable, and responsive action. We make a point of working together as a team to bring the desired results to all parties involved in the real estate transaction. We, at Schuman & Associates have built our reputation on providing thorough and personalized service in each aspect of every transaction.

Schuman & Associates LLC in-depth real estate legal experience extends to international real estate buyers and sellers. Our real estate attorneys are knowledgeable of the concerns of international buyers and sellers, including the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).

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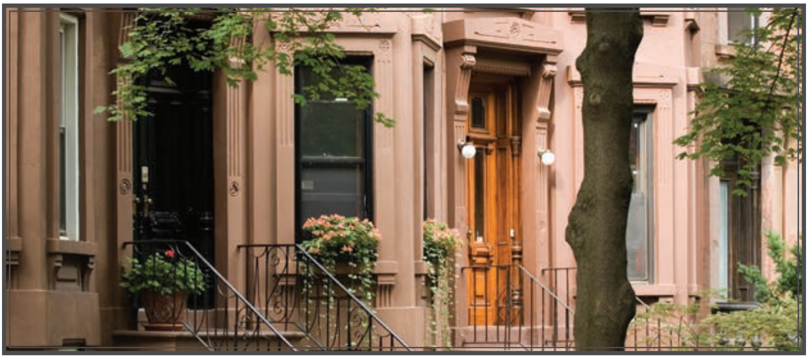
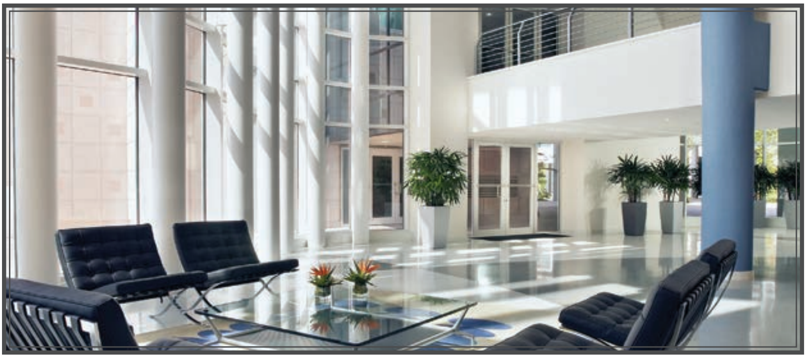


Chapter 1 INTRODUCTION

This book was created to provide you with an overview of what you will need to know in order to finance and purchase a home in New York. Choosing the place where you will live and making what is likely to be the largest financial investment in your life are very important decisions. While this book was written to assist you in this endeavor, it also is highly recommended that you select a team of trusted and experienced real estate professionals to guide you throughout the process. This team ideally should be comprised of a real estate broker, a real estate attorney, and a bank loan officer or mortgage broker.



Chapter 2 THE DECISION TO PURCHASE A HOME

Every homeowner has been a first-time buyer once in his or her life, so you are not alone. Since purchasing a home is most likely the largest purchase you will ever make, you must first consider if you are ready to take this important step. You should weight the advantages of owning versus renting. If you decide to purchase, you will have to decide whether you want to live in a co-op, a condominium, or a single-family home, which neighborhood you want to live in, and how much you can afford to spend for your home. As you can see, there are many choices and decisions that will have to be made.

This book will guide you through the process of purchasing a new home. The first step in this process is to ask yourself the following important questions:

1. What are your personal reasons for buying a home?
2. Do you need room for a growing family, or do you want to move closer to work or to schools?
3. How long do you plan to own this home? In some cases, you may be better off renting if your job requires frequent relocation or if you want to have the flexibility to move on a whim.
4. Do you have enough cash for a downpayment and closing costs?
5. Can you afford to make a monthly mortgage payment and still pay your other bills? Generally, your mortgage payment should be no more than one-third of your net income.

6. Do you need the income tax break? Mortgage interest and property taxes are tax-deductible items. Although you may be making a larger monthly payment than if you are renting, remember to take into consideration the money you will save because of the tax deductibility of a portion of your monthly carrying expenses.

The Advantage of Home Ownership

Almost two-thirds of all Americans own their own home. Some of the advantages to home ownership are:

1. **More Housing Options.** Generally, there are fewer options in the type and location of rental housing. If you are looking for a particular type of apartment or house or are interested in living in a certain neighborhood, you may have to buy.
2. **Tax Advantages.** A significant portion of the money you spend on mortgage interest and real estate taxes is deductible from your taxable income.
3. **Value Appreciation.** The value of your home may increase over time, providing you with a valuable asset and a smart investment.
4. **Autonomy.** As a homeowner, you will have more freedom to make changes to your home than you will have as a renter. And, unlike a renter, you have the security of knowing that as long as you meet your financial obligation related to the property, you cannot be evicted or be forced to move when your lease expires.

You can shop for a home by reading the classified ads or by surfing the Internet. However, an experienced real estate agent will be invaluable in helping you focus your search and analyze the market as well as represent you in negotiations with the seller and by providing reliable references for the other qualified experts that you will need along the way, including a bank loan officer or mortgage broker, a home inspector, and a real estate attorney.

Once you have made the decision to purchase a home, you need to determine how much you will be able to spend. How much you can afford will depend on your income and how much money you have available for the downpayment and the closing costs. Your income also will determine how much you will be able to pay for monthly housing expenses and how large a loan you will be able to obtain. As a rule of thumb, you should add the amount of cash you have available for the downpayment plus the closing costs plus the projected loan amount in order to calculate your affordable price range for a buying a home.

Downpayment

When you sign a contract to purchase a home, you will be required to simultaneously make a downpayment equal to ten (10%) percent of the purchase price. The downpayment check may be a personal check, and it will be made payable to the seller's attorney who will hold the money in an attorney escrow account until the closing. In general, when obtaining a loan to buy a home, any funds that will be used for the downpayment and any other funds that are used to pay for the home (other than your bank loan) must come from your own savings. No money can be borrowed from any source, i.e., no credit cards, no personal loans, and no credit lines can be accessed. However, you may be able to receive a gift of funds for the downpayment or a portion of the purchase price as long as you disclose this to your lender in your loan application and provide a gift letter (to indicate that you do not have to repay the money given to you).

Closing Costs

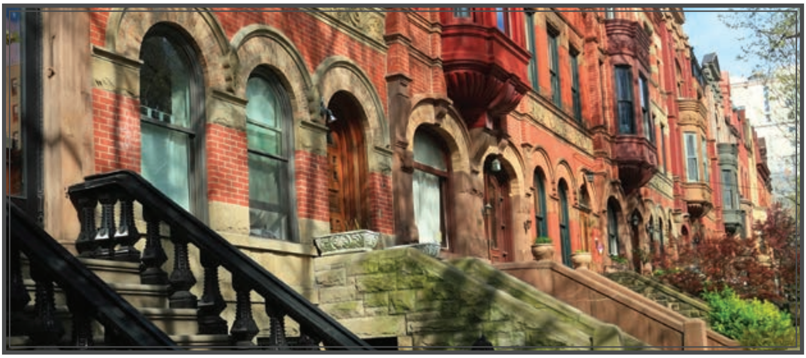
As you begin to determine how much money you will need to purchase a home, you must also consider the costs associated with the closing. Closing costs will vary depending on the type of property you are purchasing and the type of loan that you select. Generally, closing costs for a house or condominium apartment (i.e., real property) will be greater than those for a co-operative apartment (i.e., personal property). When purchasing real property, you must purchase title insurance and pay a mortgage recording tax on your loan amount, whereas title insurance is not necessary when purchasing personal property and as of the date of the printing of this book, there is no mortgage recording tax on co-op loans (there is, however, a bill under discussion in Albany that would tax loans for the purchase of co-op apartments). Purchasing a co-op apartment or a condominium unit from a sponsor or developer will also increase your closing costs substantially as you will see in Chapter 11.

Monthly Expenses

Besides your monthly loan payment, there are other costs of owning a house, co-op, or condo apartment. In a co-op, these charges are called "maintenance" and in a condo, they are called “common charges”. These charges typically cover a share of the costs of operating the building, such as the cost of utilities for the common areas of the building, salaries for building employees, real estate taxes, and property insurance. These operating expenses are apportioned to each co-op or condo unit owner by the apartment corporation or condominium association on a monthly basis. In the case of a co-op, the monthly maintenance payments also cover local real estate taxes on the building and payments on the building’s underlying mortgage. For house and condominium apartment owners, real estate taxes and homeowner’s insurance are an additional expense that should be factored into the calculation of your anticipated future monthly expenses. Taken all together, the monthly costs of owning a home are referred to as “carrying charges”.

Qualifying for Financing

The most efficient way to determine how much you will be able to borrow for a home purchase is to pre-qualify for a loan. Pre-qualifying will not cost you anything, and will give you a good idea of how much you will be able to borrow based upon your current income, assets, and liabilities. Your lender will consider your assets, liabilities, your debt-to-income ratio, other loan payments, credit card payments, and other static monthly obligations in its debt review. Your lender will also order a credit report to examine your credit and payment history with credit cards and other loans. To substantiate your income, you will also be required to submit to your lender, a financial statement, copies of tax returns for the previous two years, pay stubs, W-2 statements and your most recent bank statements.



Chapter 3 HOME OWNERSHIP AND INCOME TAX CONSIDERATIONS

One of the greatest benefits to home ownership is that a homeowner may deduct from his or her taxable income amounts associated with certain expenses of owning a home. Practically speaking, when figured on an after-tax basis, the costs of home ownership are lower than the actual out-of-pocket costs. The higher your tax bracket, the greater the benefit these deductions are to a homeowner. The tax benefits are derived from two basic expenses: mortgage interest and real estate taxes.

Mortgage Interest

When you make a mortgage payment, a portion of the payment is applied toward repaying the principal amount of the loan (called "amortization") and the balance of the payment is applied toward paying the interest on the loan. During the early few years of your loan, most of your loan payments are applied towards paying the interest on your loan. By the end of your loan term, you will be paying principal primarily. At the end of each year, your lender will send you a statement (Form 1098) showing how much you paid in interest for the year. This portion of your mortgage payment is tax deductable. There is, however, a limit on tax deductibility. The interest portion of loans that are in excess of $1 million and on additional debt (i.e., second mortgages and home equity loans in excess of $100,000) are not tax deductible.

Real Estate Taxes

Real estate tax payments, whether paid out of an escrow account maintained by your lender or paid by you directly to the taxing authorities, are tax deductible. If your lender pays the tax bill out of the escrow account that you have established with the lender, your lender will provide you with a statement at the end of the year indicating the amount of taxes that were paid for the year.

Taxpayer Relief Act

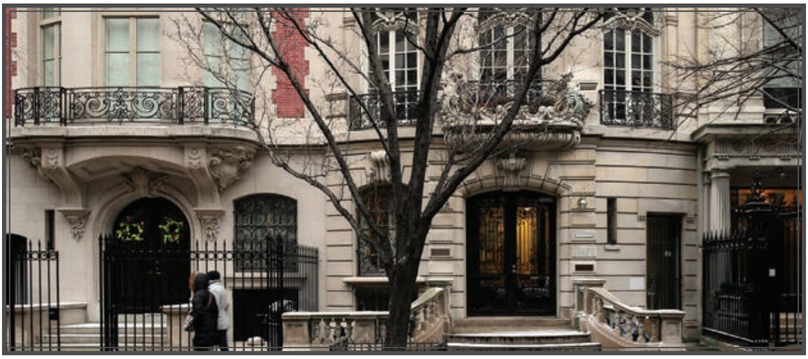
As a result of the Taxpayer Relief Act of 1997, individual taxpayers can now realize up to $250,000 in tax-free gains on the sale of a principal residence. For married taxpayers who file jointly, the exclusion is $500,000. These exclusions cover any property that has been used as a principal residence for at least two of the five years preceding a sale. The deductions may be taken each time a taxpayer sells a principal residence, although the exemption may not be claimed more frequently than once every two years. This exclusion is available regardless of the taxpayer's age and is not affected by whether a homeowner had previously claimed the one-time $125,000 exclusion under the prior tax law.

Taxation of Second and Vacation Homes

The tax benefits of ownership also apply to purchasers of second homes or vacation homes. If you rent out the property for 14 days or less in any calendar year, you can treat the property as your residence and if you itemize your deductions on your income tax return and the mortgage interest is fully deductible up to $1.1 million of debt secured by your first and second homes and used to acquire or improve the properties. (That's a total of $1.1 million of debt, not $1.1 million on each home). The real estate taxes on each property are also tax deductible. If you rent out the property for more than 14 days per calendar year, the rules become somewhat more complicated as you must report all rental income and allocate costs between the time the property was used for personal purposes and the time it is rented. It is suggested that you consult with your tax advisor to discuss how these rules would apply in your situation.

Maintenance Charges (Co-ops Only)

Because co-op monthly maintenance charges include a portion of the debt service on the building's underlying mortgage as well as the real estate taxes for the building, a portion of the maintenance (usually around fifty (50%) percent) qualifies for an income tax deduction for the co-op apartment owner.



Chapter 4 DEFINITIONS OF SINGLE-FAMILY HOUSES, CO-OPERATIVE APARTMENTS, CONDOMINIUM APARTMENTS, AND COND-OPS

What Is a Single-family House?

In the U.S., a single-family house is the most common form of home ownership. Ownership is evidenced by a Deed that gives "fee-simple" ownership of the house and the land on which it sits. The homeowner is responsible for payment of all real estate taxes, insurance, utility, and maintenance costs for the house.

What Is a Condominium Apartment?

Condos are found in almost all cities. Like a single-family house, a condo is considered real property and the purchaser obtains title to the apartment by receipt of a Deed. Rather than owning the building itself, a condominium unit owner owns the interior space of the apartment and a share of the building (known as the "common areas" or "common elements") with the right to use the common areas of the building, such as the community facilities, laundry room, parking spaces, and hallways. Generally, a condo owner is permitted to alter the interior of his or her condominium apartment provided that the alterations do not adversely affect the building's structure or systems or interfere with neighboring apartments.

A condominium is governed by an elected board of managers whose powers are derived from a Declaration of Condominium and the Condominium's By-Laws. The condominium's board of managers makes the financial decisions about the amount of common charges that must be collected from the unit owners to cover the building's operating expenses and to maintain the building's common areas, including the roof, hallways, and lobby. A condominium unit owner may obtain as large a loan for which he or she qualifies without any limitation by the condominium as to the amount of the loan. Each condominium unit owner also pays the real estate taxes on the unit which taxes are determined by the governmental taxing authorities. A condominium's board of managers usually does not have decision-making powers regarding the sale or the sublet of the condo unit. Purchasers and subtenants of owners must submit an application to the condo's board of managers. The board will review the application and either approve the applicant or in rare instances, exercise the condo's "right of first refusal" to purchase or rent the unit at the purchase price or rental amount in the proffered contract or lease. Because a prospective purchaser or tenant cannot be rejected by the board, purchasing a condo is generally a better choice for investors.

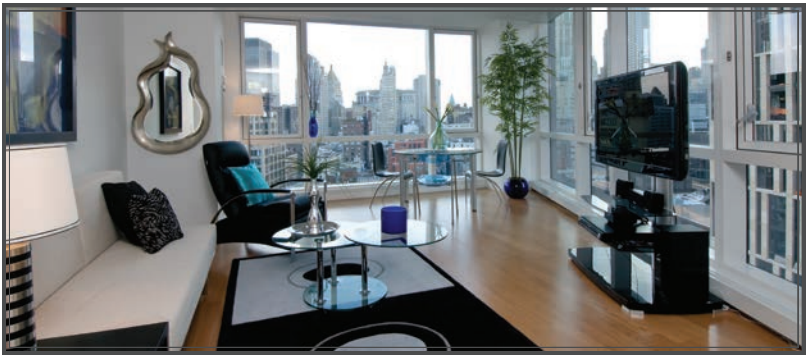
What is a Co-operative Apartment?

Co-ops are common in New York City but relatively uncommon elsewhere. A co-operative corporation owns the building, including the individual apartments and the common areas. The corporation issues shares of its stock, which are allocated to each apartment, based upon its size and location within the building. As a shareholder in a co-operative corporation, you also receive a proprietary lease from the corporation, which gives you the right to live in the apartment. Most co-operative corporations have a mortgage covering the entire building and each shareholder may obtain a loan for the purchase of their own apartment. Most co-operative corporations limit the amount of money a purchaser may borrow for the purchase of their apartment to an amount equal to between 50% and 80% of the purchase price. To obtain financing, a purchaser pledges their stock and lease as collateral for the loan and authorizes the lender to file a Uniform Commercial Code Financing Statement (UCC-1) in the county where the apartment is located to give the lender a lien against the apartment.

Each co-op corporation is governed by an elected board of directors whose powers are derived from the certificate of incorporation, the bylaws, the house rules, and the proprietary lease. The co-op's board of directors establishes the co-op's annual budget and makes all decisions about the operation of the building including the amount of the underlying mortgage, whether or not a purchaser's or subtenant's application to purchase or sublease in the building will be approved or disapproved, review and approval of repairs and alterations of individual apartments, repairs and capital improvements to the building, and the amount of monthly maintenance to be collected from the shareholders to cover the building's operating expenses. As a co-op owner, you pay a monthly maintenance fee to the co-op corporation to cover your share of the costs of operating the building. Typically, operating costs for the building are comprised of property taxes, monthly payments on the underlying mortgage, insurance, utilities, and labor costs.

What Is a Cond-op?

A cond-op is a residential co-operative building where the ground floor (typically consisting of commercial units such as offices or retail stores) is converted into a separate condominium unit owned by either an outside investor or by the original sponsor of the building. If the co-op corporation does not own the condominium portion of the building, the co-op corporation will not receive any of the rent paid by the commercial tenants. Most importantly, a cond-op's policies regarding subletting and sales of the residential units are similar to those for a condominium.



Chapter 5 GETTING STARTED AND KEY PERSONNEL

To begin the process of buying a home, you should assemble a team of real estate professionals that includes a real estate broker, a bank loan officer or mortgage broker, and a real estate attorney. As with most teams, the stronger the individual players, the more successful you will be in achieving your goal so choose carefully and thoughtfully the individuals who will make up your team.

Real Estate Broker

Often, the first person consulted about buying a home is the real estate broker. To find an effective broker who can steer you through the complex maze of home buying, get referrals from neighbors, friends, colleagues, your lawyer, or financial advisor. You should look for a broker with whom you feel comfortable, not anxious and pressured. The broker should specialize in neighborhoods where you want to live, return phone calls and emails promptly, answer questions readily, and inform you about new listings. Not only will your real estate broker be your conduit to available properties and your aide in negotiation, he or she also will coordinate the activities of the other team members, such as the home inspector and the real estate attorney. By doing your homework to find an experienced broker, you will have someone in your corner that can assist you at almost every step of the transaction, particularly with the selection and comparison of properties and the negotiation of the purchase price and with the preparation of your purchase application board package when purchasing a co-op or condo apartment. Best of all, there is no cost to working with a broker since the brokerage commission is paid by the seller.

Loan Officers and Mortgage Brokers

To obtain a home loan, most purchasers enlist the help of a bank loan officer or mortgage broker. In addition to processing your loan application, the loan officer or mortgage broker will evaluate your financial situation, pre-qualify you for the loan amount that you can afford, and calculate your monthly loan payments.

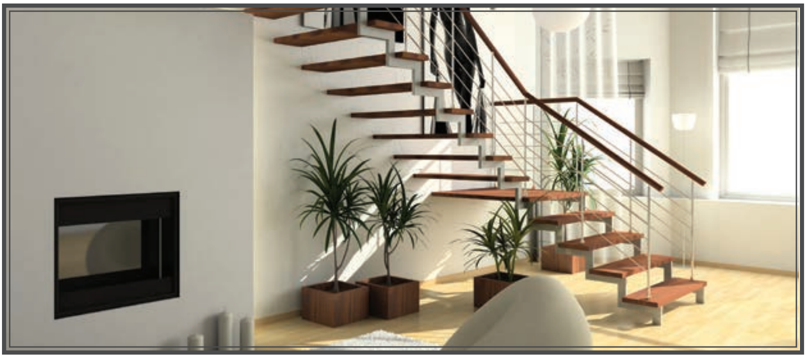
Mortgage brokers are not lenders (although in some instances, they can act as the Lender); rather they arrange and negotiate the conditions and terms of loans from lenders on your behalf. Bank loan officers are employees of the lender and have direct access to the underwriters who make the decisions on whether or not to approve a loan. Your satisfaction in the process of buying a home may greatly depend on your relationship with, and the competency of your loan officer or mortgage broker. If the application, processing and underwriting go smoothly, it can be a simple process. If you encounter problems with your loan, it can turn into a stressful nightmare. Many purchasers have found that going directly to their bank, even if they have a long-standing banking relationship, affords them no better terms and conditions than those offered by a mortgage broker or the bank loan officer of another bank. Both loan officers and mortgage brokers will assist you in preparing and submitting a loan application to a lender and will explain all aspects of the loan process. In most instances, the mortgage broker's service is free to the purchaser since the mortgage broker's fee is paid by the bank lending the funds and the loan officer is paid by the bank for each loan that he or she originates.

Real Estate Attorney

You should always retain the services of a real estate attorney who is licensed to practice in the State of New York and is experienced in representing home buyers. You need an attorney because of the inherent conflicts of interest between purchasers and sellers. Once a contract is signed, the rights and obligations of the parties are fixed. You should hire an attorney before you sign any documents related to your purchase.

Prior to signing a contract to purchase a home, your attorney should perform a thorough due diligence review of the underlying documents relating to the home. For a house purchase, your lawyer should examine the deed, the title report and survey, the certificate of occupancy, and any documents that may be recorded against the property, such as easements and restrictive covenants. For a condo or co-op purchase, your lawyer should examine the offering plan and amendments, the by-laws, the rules and regulations of the building (regarding pets, guests, alterations, repairs, noise, nuisance, sublet policies and home occupations), the board's meeting minutes, the financial statements of the co-op or condominium for the last two years, the proprietary lease (for co-ops), the number of owner-residents, the number of investment apartments, assessments history, construction and repair and major capital improvements, the underlying mortgage, and the existence of lawsuits, if any. Your attorney's investigation and analysis of a house's underlying documents and physical and financial status and history should identify any serious problems with the building and enable you to make a decision about whether or not you want to purchase a particular home or apartment.

Once a seller has accepted your offer to purchase, the seller's attorney will prepare a contract and send it to your attorney. Your attorney will review the contract with you, explain the conditions and terms contained in the Agreement, and give you an estimate of the closing costs. Most attorneys will negotiate with the seller's Attorney to include an additional rider to the contract containing terms that further protect your interests in connection with the purchase. Once you and the seller have agreed to all of the terms of the contract, first you and then the seller will sign the contract. Your attorney should send a copy of the signed contract to your loan officer or mortgage broker since he or she will need a copy of the contract to process your loan application. After you receive a commitment from your lender agreeing to make a loan to you (known as the "Commitment Letter"), your attorney will review its terms and will explain any conditions contained in the Commitment Letter. Your attorney also will order a title report (for a condo or house purchase) or a judgment and lien search (for a co-op purchase) after the contract is signed to examine the title to the property and to identify any liens or encumbrances filed against the seller or the property that must be removed prior to or at the closing. If you are purchasing a house, your attorney will schedule the closing as soon as all title conditions have been cleared and after you have obtained clearance from your lender to close the loan. If you are purchasing a co-op or a condo unit, besides needing clearance from your lender, you will have to wait until you have been approved by the co-op corporation or condominium board. As soon as all the necessary approvals and clearances have been obtained, your attorney can schedule the closing with the seller's attorney, your lender's attorney, and the building's managing agent. Your attorney will prepare a preliminary closing statement containing a list of the bank and personal checks required for the closing and will attend the closing with you to explain all loan and closing documents that you will be required to sign. After the closing, your attorney will provide you with a final closing statement and copies of all documents that you signed at the closing.



Chapter 6 SHOPPING FOR A HOME

Once you have determined how much you can afford to spend for your new home and have assembled your team of real estate professionals to assist you, you can focus on the type of home you would like to purchase. If you are working with a real estate broker, be sure he or she knows what your priorities and requirements are for a home and neighborhood. Defining your price range, house or apartment size, and preferred amenities will help your broker with the search. Remember, flexibility in any of these areas will greatly increase your chances of finding the best home for you. Your broker will schedule an appointment with you to show you apartments that match your requirements. You also should attend as many open houses as you can even if your broker is not available. If you do attend an open house, be sure to register your real estate broker's name as your representative so that he or she can assist you with the purchase if you decide to make an offer.

When you are searching for a home, bring a notepad to make notes about each property that you visit since the distinctions between properties tend to blend together if you visit several in one day. You may find it helpful to create a checklist to consider and keep track of the following items when you visit a potential home:

- What is the visible condition of the home's exterior, and in the case of a co-op or condo, the lobby, the elevators, and the hallways? A co-op or condo building in need of major repairs may require an increase in monthly maintenance or a special assessment to raise money to cover the cost of the repairs.
- Has the home been well maintained, or does it require major repairs or replacements?

- If you are looking at a co-op or a condo, where is the apartment situated in the building? An apartment that faces the front of a building will provide light but might be exposed to more traffic and noise.
- What is the condition of the other homes or buildings on the block? If neighboring homes or buildings are in poor condition, it could affect resale values.
- How close is the home to shopping, schools, parking garages, and public transportation? Nearby services can add value to a home.
- Are there community amenities close by? What is the reputation of the public schools in the neighborhood? Parks, museums, restaurants, and good public school districts can add value to the property.
- How long has the home been on the market? A home that is on the market for a long time may indicate a problem with the home or property or an inflexible seller.

After you have looked at many homes, take some time to think about which one would be best for you. Use all the information that you have collected to compare the various homes before you commit to one. Weigh all the pros and cons. One home may have all the features that you want, but the price may be too high. Another home may need significant cosmetic work, but may have other attractive features and may be in the right price range. Consider the monthly carrying charges and the resale value of the home and make sure that you can obtain the required financing before you make your final decision.

Types of Home Ownership

There are four ways to hold legal title to a home. You should discuss these with your attorney before closing so you have a clear understanding of the advantages and disadvantages of each form of ownership:

- Sole Ownership: One person owns the home entirely.
- Joint Tenancy with Right of Survivorship: When two or more people own an equal undivided interest in the home. If one owner dies, the surviving owner automatically becomes the owner of the deceased owner's interest in the home.
- Tenancy by the Entirety: The same as joint tenancy with right of survivorship except that it only applies to married couples. If one spouse dies, the surviving spouse automatically becomes the sole owner.
- Tenancy in Common: Two or more persons own a share (generally 50/50) of the ownership of the home without rights of survivorship.

Chapter 7 MAKING AN OFFER TO PURCHASE

Negotiation

Once you have found a home that you would like to purchase, the next step is to submit your offer. If you are working with a real estate broker, he or she will submit your offer and will usually be involved throughout the negotiation process. Most purchasers feel more comfortable negotiating through a real estate broker rather than dealing face-to-face with the seller.

In most cases, the seller already has stated an asking price. You do not have to accept this price. In fact, the seller typically expects some negotiation of the price and the other terms of the contract. Usually a contract is determined though a series of offers and counter offers until both parties agree on the price, the closing date, the loan amount, if any, and the length of time to obtain a loan if the seller has agreed to a financing contingency (defined below), any repair work, the condition of the property, and the inclusions or exclusions of personal property within the home. Once the seller accepts your offer, you should immediately inform your attorney.

Contract of Sale

A real estate contract is written evidence of the agreement between a purchaser and a seller. The contract will specify all of the terms and conditions of the transaction and will describe the parties' respective rights and obligations. The contract also will contain contingency provisions and representations of the purchaser and seller that describe what will happen if things do not go exactly as stated in the contract. As soon as your offer is accepted, the seller's attorney will prepare the contract of sale and forward it to your attorney. Your attorney will explain your rights and obligations under the terms of the contract and will negotiate any necessary changes to the contract with the seller's attorney. After all of the terms in the contract are agreed upon, your attorney will send you four copies of the contract for you to sign and return to his or her office along with a personal check for the downpayment as specified in the contract. This check will be deposited by the seller's attorney in an escrow account until the actual closing date and applied towards the purchase price.

Basic Contract Terms and Contingencies

The contract will identify the purchaser and seller, their attorneys, the house or apartment to be sold, the party who will hold the contract deposit (usually the seller's attorney, also referred to as the escrow agent), the names of the real estate broker(s), the current real estate taxes (if a condo or house), common charges, or maintenance fees, and any assessments that may be levied against the co-op or condo apartment, whether or not there is a flip tax (transfer charge levied by the co-operative corporation), and the party who is responsible for making this payment. The contract also will state if the purchase is contingent on the buyer obtaining a loan (i.e., financing contingent), and if so, the amount of the loan. The contract will identify the proposed occupants of the home (if other than the purchasers) and if the purchaser has any pets.

Key Terms Found in a Contract:

- **Contract Deposit.** The contract deposit generally will be ten (10%) percent of the purchase price. The money is held in the seller's attorney's escrow account (usually non-interest bearing).
- **Flip Tax.** A flip tax is a charge levied by a co-operative corporation on the transfer of ownership of an apartment. A flip tax is used as a means of generating income for the building and is customarily paid by the seller. The flip tax may be based on a percentage of the seller's profit, a percentage of the sales price or a dollar amount per share transferred. Not all co-operative corporations impose a flip tax and condos rarely do.

- **Occupants.** If the occupants of a co-op apartment will not be the purchasers (e.g., parents purchasing for son or daughter) this will be detailed in the contract.
- **Pets.** If the building permits pets, the contract will state the type and number of pets to be kept in the home. Some co-ops prohibit certain breeds of dogs or dogs over a certain size or weight.
- **Purchase Price.** The purchase price will be stated, and the terms of the payment will be defined in the contract. The terms are customarily a ten (10%) percent deposit to be paid at signing with the balance due at the closing (usually 60 to 90 days from the contract signing) in certified funds. Customarily, a purchaser can get a 15 to 30 day extension of the closing date. Extensions beyond 30 days, however, are solely at the discretion of the seller.
- **Personal Property (also known as "personality").** Since real estate is defined as "land and anything permanently affixed thereto", personal property is everything not permanently affixed to the apartment, including: hardware, kitchen appliances, cabinetry, air conditioners, lighting fixtures, wall-to-wall carpeting, washer and dryer, window screens, and window treatments (drapes, shades, and blinds). The contract will provide a list of those items of personal property, which will be included or excluded in the sale. You should assume that no personal property is included unless the contract expressly states that it is.
- **Condition of the Property.** Generally, contracts for the sale of co-op and condominium apartments will stipulate that the apartment will be sold in its "as is" condition. Most contracts for co-op and condo apartments are not contingent upon a home inspection, and purchasers generally do not have an inspection performed based upon the knowledge that the co-op corporation or condominium association is responsible for the maintenance and repair of the building's common areas, structure and operating systems. If, however, you and the seller have agreed that the seller will perform some repair to the interior of the apartment prior to closing, this must be included in the contract. Since condominium by-laws and co-op proprietary leases provide that the unit owner is responsible for the maintenance and repair of the interior of the apartment (including the plumbing and the heating and

electrical fixtures and systems within the apartment) the contract should contain language requiring that these fixtures and systems must be in working order at closing. You will be responsible for all repair expenses to the home and its appliances after the closing, so it is important for you to be familiar with the condition of the home or apartment before you sign the contract. The contract also will state that the seller deliver the premises vacant and broom clean at closing.

If you are purchasing a single-family house, you should hire a home inspector or engineer to perform an inspection to determine the condition of, among other things, the heating, plumbing, electrical systems, appliances, roof, and foundation, since as an owner, you will be solely responsible for the maintenance and repair of the home, both inside and out. The contract of sale will likely contain a provision which stipulates that the home is being sold in its "as is" condition so that the seller will not be responsible for any repairs to the home discovered after the contract is signed. Generally, the contract will not be contingent upon the purchaser obtaining an acceptable home inspection report, so a seller will generally insist that the purchaser arrange for a home inspection prior to signing the contract, if at all. That way, if the purchaser is dissatisfied with the results of the inspection, both the purchaser and seller can walk away from the deal without having spent money on legal fees for the negotiation of the contract. Of course, the purchaser is free to negotiate with the seller to repair any of the problems that are discovered in the home inspection or to obtain a reduction in the purchase price. It is recommended that you accompany the home inspector during the inspection process. He can point out any problems with the home as he discovers them, and you will not have to wait for a written report. Some tests take longer to perform, and in these instances, the contract will be contingent upon the receipt of acceptable results. Tests for water potability, fuel tanks, radon, and termites can take up to two weeks to complete. If the results of any of these tests are unsatisfactory, the contract will generally state that the seller has the option of correcting the problem prior to closing and that if the seller chooses not to correct the problem, the purchaser will have the right to cancel the contract. In New York State, a seller is required to deliver to the purchaser a form disclosing any known defects in the home, but a seller is permitted by law to give a $500 credit to the purchaser at closing in lieu of providing this disclosure.

- **Closing Date.** The contract will indicate a date for closing. The closing date in the contract is, however, only an estimated date for closing because there may be many conditions that a purchaser must satisfy between the contract signing and the closing date. The timing of these conditions (including obtaining a loan commitment and obtaining co-op board approval or the condo's waiver) B is mostly beyond a purchaser=s control.
- **Financing Contingency.** A financing contingency provision in a contract permits the purchaser to cancel the contract and obtain a full refund of the contract downpayment if the purchaser is unable to obtain a loan. The financing contingency provision will describe the maximum amount of financing for which a purchaser is permitted to apply and the maximum permitted term of the loan. Generally, the provision will allow the purchaser between 30 and 45 days to obtain a loan commitment letter and will permit the purchaser to cancel the contract if the purchaser has not obtained a loan commitment letter within that time period.
- **Co-op Board Approval.** In co-operative corporations, the sale of an apartment will be subject to approval by the board of directors. The purchaser must submit an application along with income tax returns, verification of employment, proof of assets, letters of reference, and any additional documents reasonably required by the board within 10 days of signing the contract, if a cash deal, or within 3 days of receiving a loan commitment if the purchaser is financing the purchase. After the board of directors has reviewed the purchaser's application, the purchaser must attend an interview with members of the board of directors. If the purchaser is rejected by the board, the contract will be canceled and the downpayment will be returned to the purchaser.
- **Lead-Based Paint.** Several years ago, the federal government passed legislation that requires a seller to disclose to a purchaser any knowledge of, or information regarding the presence of lead-based paint or lead-based paint hazards in their home. The danger of lead-based paint is that small children who ingest lead-based paint chips or inhale particles of lead dust may suffer neurological damage. Although lead-based paint has been prohibited since 1978, it still may exist in older homes. Nevertheless, lead-based paint is not considered a hazard if the home's surfaces are properly

maintained or have been repainted with non lead-based paint. If the home was constructed prior to 1978, the contract must contain an affidavit wherein the seller must represent if it has any knowledge of the presence of any lead-based paint or lead-based paint hazards in the unit.

- **Condominium's Right of First Refusal.** Although it is rarely exercised, the sale of a condominium apartment is subject to the right of the condominium's board of managers to purchase the apartment on behalf of the condominium when the seller has entered into a contract of sale. The contract will provide that the condominium's board of managers must waive its right to purchase the apartment as a condition to close.
- **Marketable Title.** The contract will generally state that the sale is conditioned upon the seller transferring the premises free and clear of all judgments, liens, co-op loans, mortgages, real estate tax arrears, or other encumbrances against the property (a condition otherwise known as "clean" or "marketable" or "insurable title"). If you are purchasing a condominium unit or single-family house, your attorney will order a title report after the contract is signed and will arrange to have a copy sent to the seller's and to your lender's attorneys. If the title report reveals defects in the seller's title, the seller's attorney will be required to clear the defects prior to the closing. At closing, the title insurance company will take responsibility for recording all transfer and tax documents and will issue a title insurance policy that verifies that you have received a clean or marketable title. You will pay a one- time premium for title insurance, which guarantees that the title company will defend, at its own expense any claims made by third parties against the property's title for as long as you own the property.

If you are purchasing a co-op apartment, your attorney will order a judgment and lien search to determine if there are any recorded judgments, liens, or other encumbrances against any of the parties. As with a contract for the purchase of a condominium unit or single-family house, the contract will state that the seller must remove any judgments, liens, or encumbrances against him or her prior to closing. Although the judgment and lien search does not insure the title to the unit, you may obtain co-op title insurance for a separate fee, which will be paid at the closing. The title search and title insurance will be discussed in greater detail in Chapter 10.

Chapter 8 OBTAINING A LOAN

If you are like most purchasers, you will likely pay for a large portion of the purchase price for your home by obtaining a loan. Prior to entering into a contract to purchase a home, you should contact a mortgage broker or bank loan officer to obtain pre-approval for financing. Next to finding a home, the loan application process will be the most time-consuming task in purchasing a home. If, prior to signing a contract, you select a loan officer or mortgage broker, complete a loan application and assemble and submit the financial documentation required for the loan package, you will gain the following advantages:

- You will know how much you can borrow, so you will not waste time looking at properties you cannot afford.
- You will have an advantage over other purchasers when you make an offer, since the seller will know you are qualified to get a loan and can close quickly.
- You will be able to close your loan and purchase more quickly because you will already have assembled and submitted the required documents.

There are many loan programs available for financing a home purchase. You should be familiar with the important differences between the various types of loans available to get the one that is best for you. The type of financing you choose will make a big difference in your ability to afford the home you wish to purchase as well as with the ultimate financing costs that you will incur.

Co-op Loans versus Mortgage Loans

A purchaser financing the purchase of a co-op apartment will apply for a type of loan specific to co-ops. Co-operative financing is different from other types of housing loans because you do not get a mortgage in the traditional sense of the term. Since you will be buying shares of stock in a corporation that owns the building rather than the real estate itself, you will be pledging your stock in the co-op corporation and the proprietary lease issued to you at closing as collateral for the loan.

At the closing, you will sign a promissory note, which evidences the debt, and a security agreement, which pledges the shares and the proprietary lease for the apartment as collateral for the repayment of the loan (and gives the lender the right to take back the apartment in a foreclosure action if you fail to repay the loan). Prior to closing, your lender's attorney will file a lien against the apartment by means of a UCC-1 Financing Statement so that your pledge of the stock and proprietary lease for the loan becomes a matter of public record. A buyer financing the purchase of a condo or a house will obtain a mortgage loan. When you obtain a mortgage loan, the property you are purchasing is pledged to the bank as collateral for the loan. At closing, you will execute a mortgage note that evidences the debt and contains a promise to repay the loan, a mortgage that pledges the condo or house as collateral for the repayment of the loan and other loan documents required by the lender. After the closing, your title company will arrange to record your deed and the mortgage in the clerk's office in the county where the condo or house is located so that your ownership and pledge of collateral is in the public records.

Types of Loans

While there are many loan products available to a home purchaser, the best home mortgage loan is the one you can afford for as long as you plan to own your home. Affordability varies with the types of mortgage loans. In the rush to make an offer on a home, you might not think that you have time to spend sorting through the many options and loan products available. Taking the time to consider the different types of loans, however, can pay great dividends. If you consider only the variables of interest rates and your monthly payment, you could pay thousands of dollars more than you should over the life of your loan.

Examine the various types of loan products available for financing the purchase of a home. Also, be aware that many co-op buildings have limitations on how much you can borrow for the purchase of the residence. Most co-op buildings do not allow a loan in excess of 75 to 80 percent of the purchase price. There are no such restrictions on condos or private homes.

Generally, monthly home loan payments will consist of principal (a portion of the debt to be repaid), interest (the fee, based upon a percentage, charged by the lender for lending the money), and in the case of condos and houses, real estate taxes and homeowner's insurance that are paid in escrow to the lender. The principal amount of the loan that will be repaid is reduced over time with each monthly payment of a portion of the principal.

Common Loan Products

Fixed rate loans are the most common loan product. There are, however, five basic loan products, and many variations on each product as described below:

- **Fixed Rate Loans.** The interest rate is set before you close the loan and remains the same for the entire term of the loan. With each monthly payment, you repay a portion of the original loan amount (the principal) plus interest. With a 30 or 15 year fixed rate loan, the monthly payment will repay the original loan amount completely by the end of the loan term. Loans with a repayment schedule are called amortizing loans. The amount of interest plus the loan repayment is called the debt service payment.
- **Adjustable Rate Loans.** Also known as adjustable rate mortgages (ARMs), these loans differ from fixed rate loans because the interest rate and the monthly payments move up and down as market interest rates fluctuate. Most ARMs have an initial interest rate period during which the borrower's interest rate does not change, followed by a much longer period during which the rate changes at preset intervals. Interest rates charged during the initial periods of the loan are generally lower than those on comparable fixed rate mortgages. Most adjustable rate mortgages have fixed rates for the first 3, 5, 7, or 10 years, followed by rates that adjust annually thereafter. Borrowers will have some protection from exceptional changes

in the interest rate because ARMs come with rate caps. These caps limit the amount by which ARM rates can adjust. The most common caps are period rate caps (which limit the amount that an interest rate can rise in any given year) and lifetime caps (which limit how much the interest rates can rise over the life of the loan).

- **Interest Only Loans.** An interest only loan allows you to pay only the interest on the loan for a set period, often the first 5 or 10 years. You do not have to pay any principal during that time. When the interest only period is up, the interest rate is adjusted to the prevailing market rate, and the monthly payments will increase as you begin to pay the principal over the remaining term of the loan. You always have the option of making more than the minimum payment and having it applied toward the principal. You can use an interest only loan to free the cash that would otherwise go toward paying the principal and invest the cash where it can theoretically bring a better rate of return.
- **Negative Amortization Loans.** A loan that allows negative amortization means that the borrower is allowed to make a monthly mortgage payment that is less than the interest actually owed during that month. The result is that the outstanding balance of the loan is actually increased rather than decreased as with loans that amortize (reduce) principal.
- **Home Equity Line of Credit (HELOC).** You may be able to obtain a second loan if you want to borrow more than eighty (80%) percent of the purchase price. A HELOC loan may be obtained with your primary lender or with a different lender. The interest rate on a HELOC loan generally changes monthly and is tied to the prime rate.

Financing Terminology

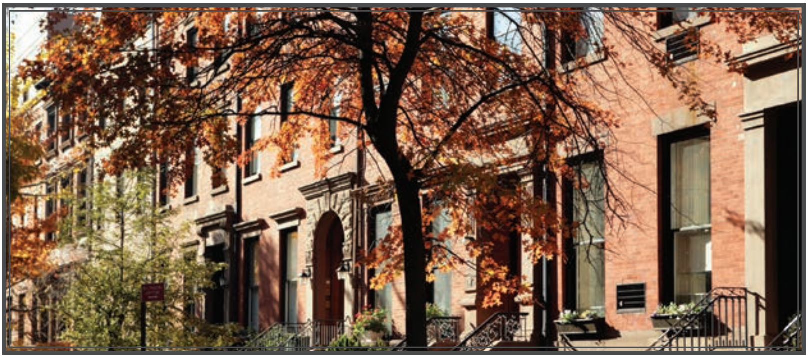
When you are deciding which loan product to choose, you should be familiar with the following loan terms:

- **Amortization.** The process of paying the principal and interest on a loan through regularly scheduled installments. The majority of each payment is applied toward interest owed initially. The later payments on the loan are increasingly applied toward the principal.

- **Principal.** The sum of money you borrow from the bank.
- **Interest.** Expressed as a percentage called the interest rate, it is the fee that the lender charges you to use the money you borrow.
- **The Term.** The period of time for which you borrow the money. Most loans are either 15 or 30 years.
- **Rate Lock.** An agreement with your lender whereby your lender agrees to give you a specific interest rate if you close your loan within a specified period of time. Rate lock periods generally run from 30 to 60 days and may be extended for an additional fee paid to the lender. Generally, the longer the term of the lock-in period, the higher the interest rate. It is important to remember that there frequently are delays in closings. This is particularly true when purchasing a co-op apartment, since board approval is required before you can close. In addition, a seller has the right to postpone the closing date beyond the date in the contract if he or she is not able or ready to close. You should consult with your attorney before locking in your interest rate so that you do not prematurely lock in your rate.
- **Escrow.** A special account that a lender uses to hold a borrower's monthly payments for monthly real estate taxes and insurance.
- **Equity.** A determination of the value of a property after existing liens are deducted.
- **Points.** A payment made to the bank equal to a certain percentage of the loan amount to reduce the interest rate. One point equals one (1%) percent of the loan amount.
- **Discount Points (also known as the Loan Origination Fee).** A fee that you can pay to your lender to lower your interest rate. Generally, for each point you pay for a 30-year loan, your interest rate is reduced by 1/8th (0.125) of a percentage point. Lenders offer various rate and discount point combinations.
- **Application and Processing Fees.** Fees charged for evaluating, preparing, and submitting a loan application to a lender.
- **Conforming Mortgage Loan.** Any loan that is at or below the amount that Fannie Mae or Freddie Mac can purchase or securitize in the secondary loan market. Your mortgage broker or loan officer can tell you what the current loan limit is.
- **Federal Funds Rate.** The interest rate that banks charge each other on overnight loans made between them. These loans

generally are made so that banks can cover their daily cash flow and reserve requirements. The rate is determined by the supply and demand of the funds.

- **Fannie Mae and Freddie Mac.** The nation's two federally chartered and stockholder-owned mortgage finance companies. These banks do not provide loans on a retail basis. They instead purchase and/or securitize loans made by other banks. Since these banks are directed by their charters to serve moderate- and middle-income families, they have loan limits on the purchase or securitization of mortgages.
- **Jumbo Mortgage Loan.** A loan for an amount exceeding the Fannie Mae and Freddie Mac loan limit. A loan in excess of this limit is considered a jumbo loan and generally carries a higher interest rate.
- **Loan to Value Ratio (LTV).** The money borrowed relative to the value of the property. An LTV of eighty (80%) percent means that the loan amount equals eighty (80%) percent of the value of the property.
- **FHA Loans.** The federal government, through the Federal Housing Administration (FHA), helps low and moderate-income families to become homeowners by providing an insurance program that encourages lenders to make loans to borrowers who might not be able to meet conventional underwriting requirements by insuring the lenders against loan defaults.
- **Primary Residence.** A home used as one's primary residence will qualify for a lower interest rate than one used as second home or investment property.
- **Prepayment Penalty.** A loan, which requires that the borrower pay a fee to the lender if the loan is paid off in full or in part before the term of the loan expires.
- **Underwriting.** The determination of the risk a lender would assume if a particular loan application is approved. The purchaser's perceived ability and willingness to abide by the mortgage loan terms as well as the value of the property involved are factors in the underwriting analysis.
- **Appraisal.** An appraisal is performed on behalf of a bank in the process of evaluating a borrower for a mortgage. The purpose of an appraisal is to determine if the price you are paying for the home is justified by recent sales of comparable properties. For the loan to be approved, the property's market value must meet the bank's loan to value ratio requirement.



Chapter 9 PURCHASE PROCEDURES AND TIMING

Procedures

Your real estate broker, attorney, and loan officer or mortgage broker (as well as the seller's broker and attorney) must each perform a series of coordinated tasks in order to move the process towards closing. After a contract is signed, if you are financing your purchase, you will submit a loan application to your loan officer or mortgage broker. Your lender will need time to process your application to determine if the loan request will be granted. This may take anywhere from three to six weeks during which time the home will be appraised, your credit history reviewed, and the income and asset information you provided verified. Once the loan is approved, you will receive a loan commitment letter from your lender. While your loan is being processed, your attorney will order a title report (for a condo or single-family house purchase) or a lien search (for a co-op purchase). While you are waiting to obtain your loan commitment letter, your real estate broker will assist you with the completion of the board package if you are purchasing a co-op or condo. Generally, if you are not financing your purchase, you must deliver your completed board package to your real estate broker within ten days of the receipt of the fully executed contract. If, on the other hand, you are financing your purchase, you must deliver your completed board package within three days from the date you receive a loan commitment letter. Co-op board applications commonly require the following documents:

- Prior two years federal income tax returns,
- Loan commitment letter from lender,
- Three to five personal and business reference letters,
- Bank statements,
- Net worth statements from your accountant,
- Landlord reference letter, if applicable,
- Employment verification letters and/or pay stubs,
- Brokerage account statements, and
- Credit check authorizations.

Condominium board applications are similar to those used by co-ops, but generally require less documentation from the Purchaser. In any case, it's advisable to have all of your financial records easily accessible before you begin the home shopping process.

Your real estate broker will assist you with the preparation of your board package and will review the package with their manager prior to the submission of the package to the co-op or condo board. It is the broker's responsibility to ensure that all the necessary material is provided by the purchaser and to complete and submit the completed documentation to the managing agent for the building. A co-op board will schedule an interview for you after a complete board package has been submitted and reviewed by the board members. Condominiums do not require a board interview.

Timing of the Closing

If you are purchasing a condominium unit or single-family house with financing, you can generally close within six to ten weeks after the contract signing. If you are purchasing and financing a co-op apartment, you can generally close within eight to 12 weeks from the date of the contract signing. The additional time needed for co-op purchases is due to the additional requirement of a personal interview with the co-op's board of directors. Since co-op boards generally meet no more than once per month, the closing date may depend to a great extent upon when the co-op board meets to interview you. Of course, you and the seller may contractually agree to close at a later date to accommodate a seller who does not want to close before a specific date or event. This could include waiting until the end of the school year, or until a seller's new residence is ready or even to accommodate a purchaser who must first sell his or her apartment before purchasing.

Chapter 10 THE TITLE SEARCH AND TITLE INSURANCE

Title insurance is essential to the quick, efficient, and secure transfer of real estate. It is a type of insurance that protects buyers and lenders in real estate transactions from pre-existing defects, rather than a loss due to a future event.

As a buyer, you want to have confidence that the seller has legitimate title and is free from certain types of encumbrances such as mechanics liens, tax liens, judgments, etc. You also want to be sure that you are protected against certain defects such as errors in recording property deeds, undetected property liens that were improperly filed or recorded, the existence of unknown heirs, fraud, and forgery.

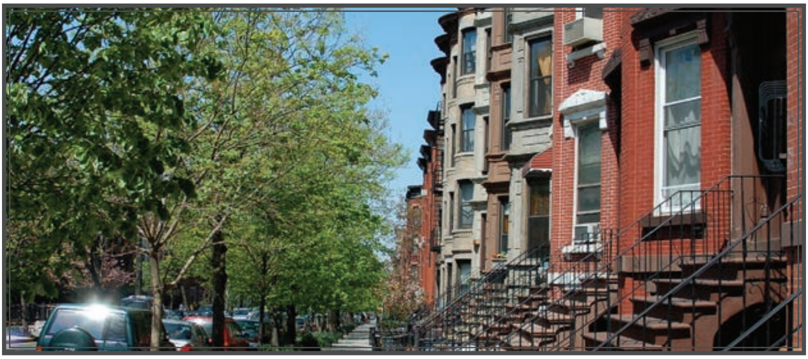
In essence, title insurance companies provide the following two services: (1) the insurance policy, which protects you from title defects in exchange for a one-time payment of a premium; and (2) an underwriting service in which the title insurance company conducts a title search and performs an extensive examination to identify and eliminate title defects, liens, and encumbrances. This risk elimination process is often times complex and can be costly.

The underwriting process starts once the buyer and seller sign the contract of sale. At such time, your attorney will place an order for a title commitment with a title insurance company. Once the title insurance company receives the order, they will then have their examiner carefully review the land records in the recording office in the county where the real estate is located. The examiner will then prepare an abstract, which will identify the ownership of property, the correct legal description of the land and any liens, mortgages, and other matters affecting title.

Once the examiner completes the abstract, a title reader and the title insurance company's legal staff will review the abstract and prepare a title report, which informs the parties as to the condition of title prior to closing.

The title insurance company then works with the seller's attorney to eliminate many of the title objections contained in the title report, which not only helps to reduce the risk of loss, but expedites the closing of the transaction. Finally, at the closing, the title closer representing the title insurance company, reviews the proofs and title documents in order for the title insurance company to issue its policy.

Once the policy is issued, title insurance will pay for defending against any lawsuit attacking the insured title, and will either resolve the title problems or pay your losses. Title problems that could result in such a lawsuit include "hidden risks" that are not discoverable by a search and examination of the public records. Matters such as forgery, incompetency or incapacity of the parties, fraudulent impersonation, and unknown errors in the records are examples of "hidden risks" which could result in an adverse claim against your insured property.



Chapter 11 CLOSING COSTS

There are various fees and charges that you will be required to pay before and at the closing. An estimate of closing costs associated with obtaining financing is contained in the lender's good faith estimate, which you will receive from your lender within three days after you submit your loan application. Although only an estimate, the document will give you a good idea of how much cash will be required for the purchase. You should review the charges with your attorney to be sure you have enough cash to cover these expenses and to ensure that the expenses conform to your understanding of the costs of financing and purchasing. Here is an example of what you can expect to pay:

Bank Expenses Paid Prior to Closing

- **Application and Processing Fees.** Paid to the mortgage broker or lender to cover the cost of the appraisal fee, credit report, and loan processing. Cost: $500 to $1,000.
- **Discount Points (also known as the Loan Origination Fee).** You may be given the option of paying an additional fee to your lender in order to lower your interest rate. One point is equal to one (1%) percent of the loan.

Bank Expenses Paid at Closing

- **Tax Service Fee (condo/house).** If you are purchasing a condo or a house, you will be required to pay real estate tax payments during the term of your loan either directly to the tax authorities or through your escrow account with the lender. Your lender will pay an independent service to monitor real estate tax payments. Cost: $70 to $80.

- **Flood Certification Fee.** Your lender will determine whether or not your property is located in a federally designated flood zone. A fee is charged by an independent service to make that determination. Cost: $15 to $25.
- **Document Preparation.** Your lender will charge you for preparing the loan documents. Cost: $200 to $300.
- **Underwriting or Administrative Fee.** You will be charged for the administrative cost of processing and approving the loan. Cost: $300 to $500.
- **Wire Transfer Fee.** Your lender will wire your loan to its attorney who will bring the loan proceeds to the closing in the form of bank checks. Cost: $15 to $30.
- **Prepaid Interest.** At the closing, you will be obligated to pay interest on the loan accruing from the closing date until the last day of the month in which the closing occurs. This is not an additional expense, only a prepayment of interest for the first month of the loan.
- **Appraisal Fee.** If your application or loan processing fee does not include the cost of an appraisal, the fee will be collected at the closing. Cost: $750 to $1,000 depending on the purchase price of the property.

If you are purchasing a condominium or a house, your lender may require you to make additional monthly payments into an escrow account to be maintained by the lender to make periodic payments for your homeowner's insurance, real estate taxes, and mortgage insurance (if applicable). The lender's goal is to have accumulated sufficient funds to pay your bills as they come due. Some lenders do not require escrow accounts and will give you the option of paying your bills directly. However, if your lender requires an escrow account, you can expect to incur the following additional costs at closing:

- **Homeowner's Insurance.** Insurance to cover possible property damage to your home. Your lender may require that you pay the first year's insurance premium prior to closing (some lenders will ask for a copy of a paid receipt) and pay to the lender an amount equal to one- twelfth of your annual premium each month to be maintained by your lender and disbursed to your insurance company annually.

- **Mortgage Insurance.** If you obtain a loan equal to more than eighty (80%) percent of the purchase price of your home, your lender may charge you a private mortgage insurance (PMI) premium payable monthly. The coverage does not protect you; it protects the lender if you default on the loan.
- **Real Estate Taxes.** At closing, you will deposit into an escrow account an amount sufficient to cover the next installment of real estate taxes. Each month thereafter, you will be required to make a payment equal to one-twelfth of the annual real estate taxes so that your lender will have enough money on hand to make all subsequent tax payments on your behalf when they become due. If the next payment of real estate taxes is due within 60 days of the closing, your lender will require that you pay these taxes at closing. For condos and houses, real estate taxes are generally paid quarterly or semiannually.

Additional Closing Costs - Applicable to Condos and Home Purchases Only

As discussed in Chapter 10, title insurance is purchased at closing with a one-time premium. The rate is regulated by the Superintendent of Insurance for the State of New York, so all title companies charge the same fee. For illustration purposes, below are title premiums for purchases in New York City in effect as of the publication date of this booklet.

Purchase Price	Loan Amount	One-time Premium
$500,000	$400,000	$2,666
$750,000	$600,000	$3,719
$1,000,000	$800,000	$5,439
$1,250,000	$1,000,000	$6,553
$1,500,000	$1,200,000	$7,651

In addition to paying the title insurance premium, you will be required to pay approximately $500 for the municipal searches conducted by the title company, $100 for policy endorsements required by your lender, and approximately $750 for the cost of recording the deed and the mortgage.

- **Mortgage Recording Tax.** The State of New York imposes a tax on the money borrowed for the purchase of a residential condominium unit or a house (co-op loans are exempt although there is legislation currently being considered that would eliminate this exemption). Mortgages on a one or two-family dwelling or on an individual residential condominium unit in New York City are taxed as follows: for all mortgages securing less than $500,000, the tax is 1.80 percent of the loan amount; for all mortgages securing $500,000 or more, the mortgage recording tax is 1.925 percent of the loan amount. If a purchaser will be purchasing two adjoining condominium units simultaneously, the mortgage recording tax is 2.80 percent of the loan amount. The mortgage recording tax in Westchester and Rockland Counties (except Yonkers) is 1.05 percent of the loan amount. The mortgage recording tax in Yonkers is 1.55 percent of the loan amount. The mortgage recording tax in Nassau and Suffolk Counties is .8 percent of the loan amount.
- **Mansion Tax.** If you purchase a single-family home, condo unit or co-op apartment with a purchase price of $1 million or more, New York State imposes an additional transfer tax on the purchaser equal to one (1%) percent of the purchase price.
- **Peconic Bay Transfer Tax.** If you purchase a home in East Hampton, Riverhead, Shelter Island, Southampton, or Southold, you will be obligated to pay a transfer tax equal to two (2%) percent of the purchase price (there is an exclusion from taxation of $250,000 in the towns of East Hampton, Southampton, and Shelter Island).
- **Survey Inspection of the Property (House Only).** Cost: $500 to $1,000.
- **Title Closer Gratuity.** It is customary to give the title closer a gratuity for attending and representing the title company at the closing. Cost: $200 to $250.

Additional Closing Costs - Applicable to Co-op Purchases Only

You will be required to pay the following additional closing costs prior to or at the closing:

- **Lien Search.** After the contract is signed, your attorney will order a lien search from a title or abstract company to examine the public records for any judgments or liens against you, the seller, and the co-op corporation. Your lender will require that any outstanding judgments or liens against you or the seller or any outstanding loans filed against the apartment must be satisfied (paid-off) at or prior to the closing. Cost: $350. Unlike title insurance, the title or abstract company does not provide a certificate of title, although one can be obtained for an additional premium.

- **Uniform Commercial Code (UCC-1) Filing Fee.** Prior to closing, you will sign a document that will permit your lender to file a lien against the shares allocated to your apartment in the county clerk's office. Cost: $75 to $100.
- **Financing (Recognition Agreement) Fee.** At the closing, you will be obligated to pay a fee to the co-op corporation or its managing agent for signing a document, called a recognition agreement or AZTECH form, in which the co-op corporation acknowledges that the purchaser has obtained a loan and promises to notify the lender if the purchaser fails to pay monthly maintenance or other financial obligations payable to the co-op corporation.
- **Managing Agent Application Fee.** The managing agent for the building generally charges the purchaser a fee for processing the purchase application. Cost: $350 to $500.

Additional Expenses Paid at Closing - Applicable for Co-op and Condo Purchases

- **Attorney's Fees.** You can expect to pay a flat fee or an hourly fee depending upon the complexity of the transaction plus the cost of messenger and overnight deliveries, duplication, and long distance phone calls. When purchasing a co-op or a condominium apartment from a sponsor, you may also be responsible for paying the sponsors attorney fee.
- **Move-in Fee.** Some co-op or condominium buildings will charge you a fee at closing to cover the cost of operating the service elevator and or arranging for a building employee to oversee your movers. Cost: $250 to $500.
- **Move-in Deposit.** At the closing, most co-op and condominium buildings will require that you pay a refundable fee to protect the building against any damage that you or your movers may cause to the building during your move into the building. Fee: $500 to $1,000.

- **Lender's Legal Fee.** At closing, you will be required to pay your lender's attorney to cover the cost of reviewing the title or lien search, preparing the loan documents, and attending the closing. Cost: $750 to $950.
- **Closing Adjustments between purchaser and seller.** You will be required to reimburse the seller on a prorated basis for any expenses the seller has prepaid beyond the closing date for maintenance payments (co-ops) or common charges and real estate taxes (condo/ house) at the closing. For a house purchase, you also will be obligated to reimburse the seller for any heating or cooking fuel left in a fuel storage tank.

Additional Expenses When Purchasing From a Sponsor or Developer

A developer or sponsor is the person or entity that has converted a building from a rental or commercial building to a co-op or condo or has constructed a new building. If you purchase a co-op or condo apartment from a developer or a sponsor, you may incur closing expenses in addition to those previously described. These additional expenses can be substantial and are detailed as follows:

- **Transfer Taxes.** The payment of transfer taxes is a seller's obligation by law. However, if the seller is a sponsor or developer, they may require you to pay the New York State transfer tax and, if purchasing in New York City, the New York City real property transfer tax as well. The New York State transfer tax is currently $2 per $500 of the purchase price (or $4 per $1,000). The New York City transfer tax rate is currently one (1%) percent of the purchase price for individual co-op and condo apartments priced at $500,000 or less and 1.425 percent of the purchase price for individual co-op or condo apartments priced at $500,000 or more. If you are purchasing from a developer or a sponsor in Mt. Vernon or Yonkers, you will be obligated to pay one (1%) percent of the purchase price as a city transfer tax in addition to the state transfer tax. There is no equivalent city transfer tax in Westchester, Nassau, or Suffolk Counties (except for the Peconic Bay transfer tax applicable in portions of Suffolk County).

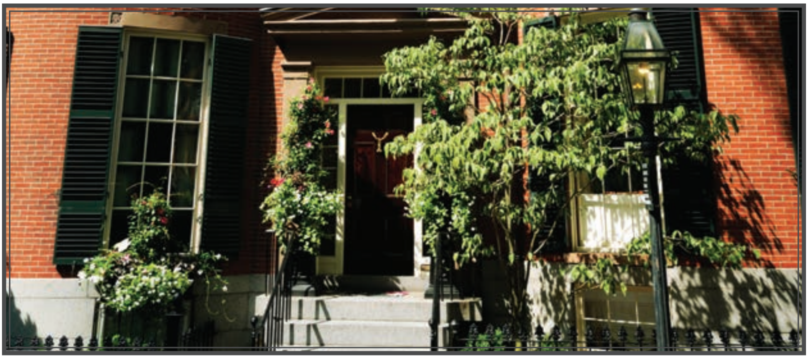
If you purchase more than one co-op or condo apartment simultaneously (even if the apartments are contiguous), the City of New York takes the position that the transaction is no longer considered a sale of an "individual" residential unit and applies the commercial tax rate to the transaction. The applicable tax rates are 1.425 percent for purchases priced at $500,000 or less and 2.625 percent for purchases priced at more than $500,000. The higher tax rate can be avoided if the Sponsor combines the units prior to closing.

In addition, since the transfer taxes are by statute a seller's expense, New York City and New York State taxing authorities take the position that when a purchaser pays the transfer taxes, the purchase price should be increased or (grossed up) to include the amount of the transfer taxes (the grossed up consideration also applies to the calculation of the Mansion Tax). In those instances where the purchaser pays the transfer taxes, the state transfer tax and the city transfer tax are calculated by computing the transfer taxes on the purchase price and then adding those taxes to the purchase price to arrive at a new grossed up purchase price and then recalculating the transfer taxes based upon this new grossed up purchase price. In addition, if two or more unconnected residential units will be purchased simultaneously, you will be obligated to pay the New York City Transfer Tax at the commercial tax rate of 2.625%.

If you purchase a co-op, condo, or single-family house in New York State and the purchase price is less than $1 million, you may still end up paying the Mansion Tax. Why? If you are purchasing your home from a Sponsor or Developer and are obligated contractually to pay the transfer taxes, the transfer taxes are, for tax purposes, added to the purchase price. If the new purchase price (or "grossed-up" price) is now $1 million or more, you will be obligated to pay the mansion tax at closing based upon the grossed-up price. For example, if you purchase an apartment priced at $985,000 and are obligated to pay the transfer taxes (RPT tax $14,036.25 + state transfer tax $3,940 = $17,976.25), you will be obligated to pay the Mansion Tax since the aggregate of the purchase price plus the transfer taxes ($985,000 + $17,976.25) now exceeds $1 million.

- **Mortgage Recording Tax (applicable to Condos and Houses only).** As previously described, if you purchase more than one co-op or condo apartment in the same building simultaneously, the City of New York takes the position that this is a commercial transaction and will apply the commercial real property transfer tax rate (2.625 percent) to the transaction. Similarly, if you have obtained a loan for two condominium units to be purchased simultaneously New York State taxing authorities take the position that the purchase of more than one condo unit is a commercial transaction, and the mortgage recording tax will also be imposed at the commercial tax rate. Currently, the mortgage recording tax for commercial purposes is 2.80 percent of the mortgage amount. Mortgages made within a 12-month period of each other for the same property are also aggregated for the mortgage tax computation. If you take out a second (subordinate) mortgage within 12-months of taking out a first mortgage and the aggregated amount of the mortgages is greater than $500.000, you must pay the commercial mortgage recording tax rate on the second mortgage plus the difference between the commercial mortgage tax and the mortgage tax previously paid on the first mortgage.

- **Working Capital Contribution.** Generally, you will be required to pay an amount equal to two month's common charges as a non-refundable contribution to the building's working capital fund.
- **Sponsor's Attorney's Fee.** You may be required to pay the sponsor's attorney for coordinating, preparing for, and attending the closing. The fee is generally between $1,500 and $2,500.



Chapter 12 PREPARING FOR THE CLOSING

Much needs to happen in the weeks before you close. It is advisable to stay on top of the details so you can close on time, keep costs down, and understand everything that you sign. Once the contract is signed, it is recommended that you do the following:

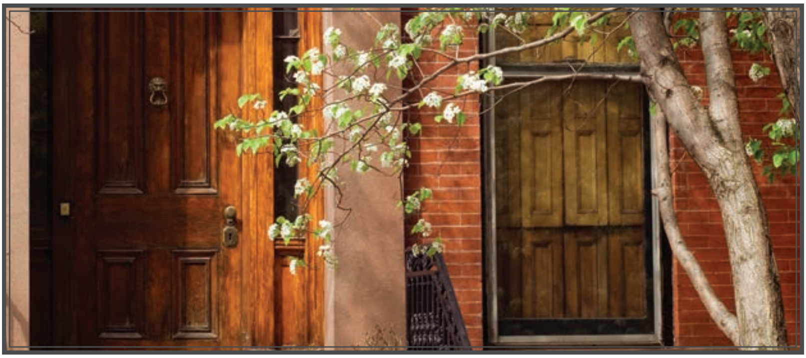
- Identify each person's roles and responsibilities in the process,
- Develop a schedule or closing plan to complete all the required tasks on time,
- Request an estimate of your closing costs from your lender and your attorney, and
- Familiarize yourself with the documents that you will be required to provide to your lender and to the co-op or condominium's representatives.

You and the team of professionals that you have assembled will need to complete many tasks between the time your offer is accepted and closing. The following chart will help you track the tasks that you, your attorney, your loan office or mortgage broker, and your real estate broker will be handling. Responsibilities may vary depending upon whether you are purchasing a co-op, a condo, or a house.

TO DO - AFTER THE CONTRACT IS SIGNED

P = Purchaser
A = Attorney
B = Real estate broker
L = Loan officer or mortgage broker

Task	Party Responsible	Date Completed
Order home inspection	P	
Send signed contract to real estate broker	A	
Send signed contract to lender	A	
File loan application	P	
Review good faith estimate	P	
Order appraisal	L	
Perform appraisal	L	
Get loan commitment letter	P & L	
Prepare purchase application	P	
Submit purchase application	B	
Attend personal interview (co-op)	P	
Determine closing costs	P & A	
Consider how to hold title	P & A	
Order lien search (co-op)	A	
Order title report	A	
Contact movers	P	
Schedule closing	A	
TO DO THE WEEK BEFORE CLOSING		
Schedule final inspection	P & B	
Move cash to checking account	P	
Order insurance binder	P	
Begin to pack	P	
TO DO ON THE DATE OF CLOSING		
Perform final inspection	P & B	
Bring bank/certified checks for balance of purchase price	P	
Bring checkbook for closing costs	P	
Bring valid driver's license or passport	P	
Have new utilities turned on	P	
Get keys	P	



Chapter 13 THE CLOSING

After you have been approved for a loan and your lender's attorney has verified that all preconditions to closing have been satisfied (including co-op board approval if you are purchasing a co-op), your attorney will schedule the closing. The closing is the final meeting between the parties at which time you will pay the balance of the purchase price to the seller who will transfer ownership of the property to you and hand over the keys to your new home. You and your attorney, the seller and his or her attorney, the lender's attorney, and the real estate brokers will attend the closing. In the case of a co-op, the transfer agent for the building and a representative of the seller's lender whose loan is being paid-off will also attend. If you are purchasing a condominium apartment or a house, a representative from your title insurance company will attend the closing to verify that you are getting a clean title and to provide a certificate of title insurance.

During the closing, you will sign the lending bank's loan documents to complete the loan transaction. The seller will sign all documents needed to convey or to transfer ownership in the home to you. In the case of a co-op purchase, you will execute and receive copies of documents that evidence your ownership of the apartment, including a stock certificate, proprietary lease, and the co-op's consent. If you are purchasing a condo unit or single-family house, you will receive a deed and a title insurance certificate from the title closer. The lender will give you the proceeds of your loan which are payable to the seller or to third parties to whom the seller must make payments for such expenses as real estate brokerage commissions or loans that are being paid off at closing. You will provide certified or bank checks to the seller equal to the difference between the purchase price, the initial 10 percent downpayment, and that portion of the purchase price, which is to be financed by your lender. In addition to your closing costs, if the closing occurs near the end of the month, you may be required by the co-op or condominium to make a payment for the common charges or maintenance for the upcoming month.

Chapter 14 CLOSING DOCUMENTS AND FORMS

The following forms and documents are usually signed and exchanged at closing.

Co-op Closing Documents

- **Stock Certificate.** The certificate issued by the co-operative corporation for the shares allocated to the apartment you are purchasing.
- **Proprietary Lease.** The proprietary lease describes the rights and responsibilities of the purchaser and the apartment corporation with respect to the use of the apartment.
- **Consent.** The consent is signed by two members of the board evidencing the co-op corporation's consent to the sale of the apartment to the purchaser.
- **Stock Power and Assignment of Lease.** These documents are signed by the purchaser to permit the lender to sell the apartment at a foreclosure sale in the event of a purchaser's default under the terms of the loan.

Condo and House Closing Documents

- **Deed.** The deed is the legal document that transfers ownership of the condo unit or house. The deed is recorded in the county where the home is located.
- **Equalization and Assessment Form.** This document informs the taxing authorities that the home has been sold and instructs the taxing authority where to send future real estate tax bills.
- **Unit Owner Power of attorney.** In the case of a condo purchase, the unit owner power of attorney gives the board of managers the authority to act on behalf of each unit owner in order to manage the day-to-day affairs of the building.

Closing Documents for All Purchases

- **Transfer Tax Forms.** Real Property transfer taxes are paid to the State of New York and the City of New York (if the property is located within the city), and both the seller and purchaser are obligated to sign the forms to verify the accuracy of the information contained in the forms.
- **HUD-1 Settlement Statement.** Prepared by the bank's attorney, this form summarizes the closing costs incurred by the purchaser and seller at closing. Truth in Lending Disclosure Statement. The bank provides an estimate of the payments the purchaser is obligated to make to the bank over the term of the loan.
- **Disbursement Authorization Form.** This form is signed by the purchaser to authorize the bank to disburse the proceeds of his or her loan in the amounts and to the parties directed by the seller's attorney.
- **Primary Residency Affidavit.** The purchaser is obligated to sign the affidavit to certify that he or she will be moving into the home within 30 to 60 days if the purchaser intends to occupy it as a primary residence.
- **Smoke Detector Affidavit and Carbon Monoxide Affidavit.** The City of New York and the State of New York require that the purchaser and seller certify that there is a smoke detector and a carbon monoxide detector installed in the home.

Chapter 15 POST CLOSING RESPONSIBILITIES

After your closing, you should organize all of the documents that you may need for tax, insurance, refinancing, and eventually resale purposes. It also is advisable at this time to update or prepare a Last Will and Testament as well as a living will and/or health care proxy to plan for the disposition of your home and your other assets in the event of your death and to appoint someone to make medical decisions on your behalf if you are incapacitated. Invest in a fireproof container or rent a safe deposit box to keep your deed or stock certificate and proprietary lease, your title insurance certificate, your homeowner's insurance policies, and all other vital records. Your house file should contain the following documents:

- **Closing Statement.** All papers signed or given to you at the closing, including your deed (for a house or condo), or original stock certificate and proprietary lease (for co-op if no bank financing).
- **Loan Data.** All loan documents signed at closing.
- **House Data.** Blueprints, floor plans, and architectural records.
- **Home Inspection Report.** A record of your house's condition at the time of purchase.
- **Insurance.** Your homeowner's insurance policy and a list of your home's contents and estimates of the value of personal property.
- **Home Improvements.** On-going record of home improvements made and receipts for possible use when you sell the home (for capital gains purposes).

N.B. This book is intended to provide general information about the purchase of residential real estate in New York and the information contained herein may change without notice. Always consult with a lawyer before signing a contract of sale.

ADDENDUM

Answers to Common Questions about I.R.C. 1031 "Tax Free" Exchanges

What Is an Exchange of Property?

The purpose of an exchange is to defer the payment of taxes on some or all of the capital gains (i.e., net profits) realized on the sale of a property if the gain is reinvested. You do not have to look for a party to buy your property and acquire a replacement property from the same individual that bought your property. You many sell your property to one person and acquire replacement property from another. By electing to defer the payment of the capital gains to the IRS, you greatly increase your selling and buying power.

What Is a Like-Kind Exchange?

Section 1031 of the Internal Revenue Code recognizes that an exchange of like-kind property is not a taxable event. You may sell and acquire a property of a like kind, which is virtually any type of real property used for business use or investment (including a co-op apartment). You may sell vacant land and acquire a warehouse or sell a multi-family rental building and acquire vacant land. The property does not have to be similar in nature. Properties can be located anywhere within the United States, Virgin Islands, and Puerto Rico. Simply put, like kind refers to real property held for business use or investment. Both the property sold and the property being purchases should be held for at least two years before being resold.

What Are the Key Elements of an Exchange?

You may not have actual or constructive receipt of the proceeds of your sale. A qualified intermediary, or middleman, must hold the proceeds. An attorney, accountant, broker, and family member are all considered agents of the taxpayer and are considered disqualified parties. If you receive or even have access to the sale proceeds, the funds are considered tainted and the gains tax deferment will be disallowed.

There are many companies whose sole purpose is to act as qualified intermediaries. The intermediary will make the exchange process very simple and will make you or your attorney aware of the time deadlines and ensure that you are in compliance with the strict requirements of the tax code. Your attorney should contact a qualified intermediary prior to the close of the sale of your property to set up an account. The qualified intermediary will prepare the necessary documents for both the sale and the subsequent purchase. The fee for the qualified intermediary's services is generally between $1,000 and $1,500.

You must identify up to three properties within 45 days of the sale of your property and purchase at least one of the identified properties within 180 days from the date of your closing (or the filing of your income tax return, whichever is sooner). If you do not specify replacement property within 45 days, you will lose your tax-deferred status. When identifying replacement property, one of the following rules must be followed:

1. Three-Property Rule. Up to three properties of any value may be identified for purchase within 45 days of the sale of your property. You may purchase one, or all three properties with the proceeds of the sale.
2. Two Hundred Percent Rule. Any number of properties can be identified for purchase provided that the fair market value of the properties identified does not exceed two-hundred (200%) percent of the sale price for the property sold.
3. Ninety-Five Percent Rule. If rule #1 and rule #2 are exceeded in the number and value of the properties identified, you can still preserve the tax deferred status of the sale if you acquire properties worth an aggregate of at least ninety-five (95%) percent of the fair market value of all of the properties originally identified. For example, you may identify $1 million in properties to purchase and acquire only $950,000 in properties. The sale and purchase transactions must be completed within 180 days from the date of the sale closing or the filing of the taxpayer's income tax return, whichever is sooner. Therefore, if you close after October 18, file for an extension on the April 15 federal income tax deadline to have the full 180-day exchange period.

How Can You Receive any Remaining Cash that Is not Reinvested in Investment Property?

1. After the end of the 45-day identification period, if you do not identify any properties to purchase.
2. After you have purchased the identified property or properties.
3. After the 180-day exchange period.

Remember that every transaction is unique. Please consult with your tax or legal advisor to determine if the investments that you are considering will satisfy the I.R.C. 1031 exchange requirements.