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Real Estate Transaction Information Sheet

I. Pre-Contracting Stage

Pre-qualification and Pre-approval - While the terms are sometimes used interchangeably, and both can be used in the home shopping process, there is a difference between a pre-qualification and a pre-approval. Pre-qualifications are generally issued based upon unverified information from the Buyer and may not require a credit check. Pre-approvals are not issued unless some basic income documentation is presented and a credit check done. Neither commits the lender to make a loan.

Deal Sheet - Once an offer is accepted, the real estate broker will prepare a transaction summary sheet (or "Deal Sheet") and send it to both attorneys. Upon receipt of the Deal Sheet, the Seller's attorney will prepare a Contract of Sale (the "Contract").

Home Inspection - While waiting for the Contract, the Buyer should schedule a home inspection of the property to determine: if there may be structural issues, to identify necessary repairs, and to expose any non-obvious conditions impacting the property. Further inspection and testing may be necessary if there is lead paint, asbestos or other concerns. A separate inspection should be made for homes utilizing a septic system. Coops and condominiums normally do not require home inspections.

Preliminary Due Diligence - When the transaction involves a co-op, condominium, or homeowner's association, the Buyer's attorney will request and review certain documents involved in the operation of the buildings and common areas. Those documents may include:

- Offering Plans, Proprietary Leases, and By-Laws
- House Rules
- Financial Records - to determine financial strength and stability
- Board Meeting Minutes - to determine potential for assessments and increases in maintenance or association dues as well as potential financial or legal issues.

II. Contracting Stage

Contract Terms – The Contract of Sale should include all terms agreed to by the Seller and Buyer as set forth in the Deal Sheet. Generally, the Seller's attorney will use a standard form for the Contract of Sale. The Contract of Sale will identify the:

- parties to the transaction,
- property address,
- purchase price,
- contract deposit (normally 10% of purchase price),
- date and location of closing

Riders – Both the Seller's attorney and the Buyer's attorney will supplement, add, and amend certain provisions of the Contract of Sale form to protect their clients from potential problems that may arise and to document additional representations made by the parties to one another. These additions, deletions and amendments are included in the riders and become part of the Contract.

Mortgage Contingency – One of the most important provisions in the Contract of Sale is the clause addressing whether or not the Buyer is obtaining a mortgage loan (mortgage contingency clause). If the Buyer will be applying for a loan, the Contract may provide that the Buyer's obligation to complete the transaction is conditioned upon loan approval within a certain time period. That means, if the loan is not approved, the Buyer will not be obligated to complete the transaction and may walk away without penalty. Alternatively, if the Contract indicates the transaction is not contingent upon a loan approval, the Buyer must complete it with or without a loan, or face a penalty.

Entering into Contract – Once the Contract and Riders have been fully negotiated by the attorneys, they will be signed first by the Buyer. Prior to signing, the Buyer's attorney will go over all important terms as well as any issues raised during preliminary due diligence. The signed Contract and Riders will be sent to the Seller's attorney with the Contract Deposit. The Contract Deposit (sometimes referred to as the "down payment") will be deposited and held by the Seller's attorney in an escrow account to be applied to the purchase price at closing. Once the Contract and Riders are signed by the Seller and a copy sent to the Buyer's attorney, the parties and property will be "in contract".

III. Post Contracting Stage

Financing (Mortgage Loan) – Once "in contract", where there is a mortgage contingency, the Buyer should immediately apply for a mortgage loan.

Loan Application – The Buyer will fill out a loan application with a lender, providing personal and financial information for the lender to determine creditworthiness and ability to repay the loan. While not obligated to apply with the same lender who supplied the pre-qualification or pre-approval letter, the Buyer must understand that each lender it deals with will request their own credit report, potentially impacting credit score.

Rate Lock – Since interest rates tend to fluctuate, "locking in" the interest rate will ensure that the rate for your loan does not change. However, rate lock agreements have an expiration date. Before locking a rate, it is important to supply your lender with a copy of the Contract and to understand that, in New York, it is common for the closing date to be extended 30 or more days beyond the date listed. With co-op's there may also be delays in obtaining approval by the Board of Directors. Make sure you lock in for long enough and be aware of any fees charged if the rate lock must be extended.

Loan Commitment – Unlike a pre-qualification or pre-approval, the loan commitment obligates the lender to make the mortgage loan. However, the commitment is usually conditioned upon receiving certain additional information from the Buyer.

Board Application Package (co-op only) – When purchasing a co-op, a Buyer will be required to submit an application to the co-op corporation for approval by its Board of Directors (the "Board"). Usually this is done after receiving the Loan Commitment. If no financing is involved, it should be submitted once the parties are in contract. Similar to the mortgage loan application, the Buyer will need to provide financial information and consent to a credit check. Additionally, the Buyer will be required to be interviewed by members of the Board. It is important to understand that, unlike other types of property, a Buyer may be rejected by the Board for almost any reason, aside from illegal discrimination, even if they are financially fit.

Title Search/Lien Search – As part of the due diligence process, the Buyer's attorney will order a title search for real estate transactions. For co-op's, a lien search is ordered. Both searches check public records for any liens against the property. A lien is an obstacle to the transfer which must be

satisfied or cleared prior to or at the closing. The most common example is an unpaid mortgage loan. For non-co-op transactions, the title search will also check public records to ensure the Seller is the legal owner and no one may claim otherwise. Other information contained in a title search report include: property taxes, building violations and open permits, certificates of occupancy, and bankruptcies and judgments against either of the parties. If necessary, a survey of the property may need to be performed to make sure there are no potential claims against the land by adjacent property owners. If a mortgage loan is involved, the lender will insist upon a title or lien search.

Title Insurance - Once a title or lien search is performed, the company performing the search will offer insurance to protect the Buyer and/or the lender from a claim not reported in the title report that arises in the future. If mortgage financing is involved, the lender will insist on insurance for itself, paid by the Buyer. For the Buyer, the insurance coverage is optional, but recommended.

Appraisal – One of the most important steps in the due diligence process is a property appraisal to determine fair market value. If a lender is involved, the amount of the mortgage loan will be based upon the lower of either the appraised value or purchase price. If the Contract of Sale does not contain a provision conditioning the sale on a certain appraised value, the Buyer will be compelled to complete the transaction even if the fair market value is significantly less than the purchase price.

IV. Closing Stage

Clear to Close – When your loan has been fully approved by the lender’s underwriting department, it is considered “clear to close”. The Buyer’s attorney will then coordinate with the lender’s attorney.

Board Approval (for co-ops) – Upon being told the Board has approved an application for a co-op sale, the Buyer’s attorney will coordinate with the co-op’s attorney or managing agent and the Seller’s attorney. If financing is involved, the Buyer will be required to sign a UCC-1 authorization form and a Recognition (Aztec) Agreement. The UCC-1 will be filed by the lender in public records to show its lien. An officer of the co-op corporation will countersign the Recognition Agreement to acknowledge that it recognizes the lender’s lien against the co-op shares.

Scheduling Closing – Buyer’s attorney will coordinate the date, time and place of closing with the Buyer, the Seller’s attorney and, as applicable, the lender’s attorney, title agency, co-op attorney or agent, and real estate brokers. The parties’ attorneys will go over payment of the balance of the purchase price, as well as any adjustments, taxes and title fees to be paid.

Final Walkthrough – prior to the day of the closing, the Buyer should coordinate with the real estate broker to do a final inspection of the property to ensure that the property, appliances, fixtures and systems are in the condition agreed upon. Any issues should be addressed prior to closing.

Closing Day – The closing usually takes less than 2 hours. However, issues not properly addressed by the parties in advance may delay its completion. At the closing, both parties will sign all documents necessary to transfer ownership of the property. The Buyer will also sign loan documents, if applicable. Attorneys for both parties should make sure their clients understand the paperwork being signed. Once all paperwork is signed and full payment made, the Seller will hand over the keys to the Buyer and the transaction will be “closed”.

As you can see, there are many details involved when buying or selling property. It is extremely important to have an attorney working for you and guiding you through the process. At Benjamin Katz, Esq. P.C. we have the knowledge and experience to navigate you through these perilous waters. CALL US TODAY!