

FAMILIARITY BREEDS SUCCESS

Post from “Lavender Law Blog” by

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WHY WOULD I WRITE A BOOK ON HOW TO BUY A CONDO IN NEW YORK CITY???

I am partner in the law firm of Marcus Attorneys LLP whose daily practice covers a variety of things, but in one shape or form, it tends to relate to real estate. As part of my practice, I have represented many people coming from all over the world (Japan, China, France, Israel, Staten Island ...) to purchase a home in the greatest city in the world, New York. Many of those purchase transactions, structured in any number of ways, were condominium units. Despite all the variety, purchasers tend to ask the same type of questions. Things like: what comes next, how much does it cost, or will I lose my down payment? Having heard stories of stolen money or collapsing ceilings, many are quite stressed (rightfully so) in what is likely the largest transaction of their lives. They are also quite relieved from the fear of the unknown after being informed what they could expect next, what it may cost and that they would not (*probably*) lose their down payment. A need exists for clear concise information on the process so that the parties to the transaction can feel comfortable moving forward towards closing in a timely fashion.

Even before I became an attorney (my mom was an agent), I have watched successful agents with knowledge of "what happens next" manage the flow of the process to ensure an eventful closing. Other agents I have dealt with over the years thought their job was done as soon as the term sheet was circulated. Except, of course, to pick up their commission check. A need also exists for a step by step guide to provide agents background information, so they can anticipate and attempt to move road blocks avoiding a bumpy and prolonged closing process.

There is an old proverb, "familiarity breeds contempt". In the world of real estate, **familiarity breeds success.**

FAMILIARITY BREEDS SUCCESS.



The success or failure of a sales transaction depends on the communication, processing and understanding of information required by parties to that transaction.

- The purchaser needs to know if they want to buy and live in a unit, the condition of the unit, the cost of the unit (sales price and closing costs) and the affordability of the purchase of the unit.
- The attorney representing the purchaser needs to know what the clients' wishes are, the condition of the unit (physical as well as title), the agreed upon terms of the sale and the laws affecting them.
- The seller needs to know what the condition of the unit is, the costs of the sale of the unit and what the profit from the sale of the unit will be.
- The attorney representing the Seller needs to know what their clients' plans are, the costs of the sale of the unit, the agreed upon terms of the sale and the laws affecting them.
- The agent needs to know what are the things that need to be completed in order to close and what stands in the way of completion in an effort remove obstacles.



Provide quality players in the closing game:

Using a sports metaphor, think of the agent as the GM (General Manager) of the real estate sales team who attempts (and needs to) provide access to the best players (inspectors, attorneys, loan officers, insurance agents) in an effort to affect, control and promote the flow of required information and ultimately, the transaction. Each of these players should be knowledgeable about the process and pitfalls that can delay the sale moving forward towards a closing.

INFORMATION IS POWER THAT PUSHES THE DEAL FORWARD

⇒ **An agent can be the one to provide that power:** Prior to an accepted offer, seller's agent/listing agent can collect the information needed for a prospective purchaser to perform their due diligence prior to entering into a contract. The parties should assume the information being collected will be requested. Generally the following are needed:

- Offering Plan.
- Amendments.
- Financials of a condominium from the last two years.
- Questionnaire.
- Renovation Application. (If applicable and available).
- Rental Application. (If applicable and available).

⇒ **Strike while the iron is hot:** When representing purchasers as their attorney, there have been countless times I sat waiting on the transaction while the Seller, Seller's attorney or broker scrambled to locate the information necessary to perform due diligence. That is one of the reasons why I launched **Offering Planet** (<http://offeringplanet.com/>). Many times, Purchasers will get cold feet or find that other/more desirable condo unit while waiting for the other side to get their act together. By having the information ready, you can "strike while the iron is hot".

- ⇒ **Time is money:** There is a direct correlation between the amount of time spent getting into contract and the likelihood that the transaction will close. In other words, the more time that elapses after the accepted offer, the less likely execution of the purchase agreement will actually occur.
- ⇒ **Make the unknown evil, known:** As many agents are (or should be) aware of the reason why pre-contract due diligence is important is to determine aspects of the condominium building or unit that may make it undesirable to actually go through with the sale.
- Potential large capital improvements which will result in assessments or increases in common charges. By knowing what they are or may be, they can either become aware of current assessments that are due in addition to common charges and real estate taxes or upcoming potential assessments or increases in common charges so that they can plan for it by setting money aside.
 - Letting a purchaser or their attorney find a "hidden evil" for themselves may scare away a potential customer. A newly discovered problem may be thought as the "tip of the iceberg" and evidence of possible numerous undisclosed pitfalls (real or imagined) lurking in the shadows.
 - By disclosing the evil affecting the sale and making it known to a buyer, it will make a potential purchaser more comfortable with its presence and less of a roadblock to closing. An agent reviewing the due diligence documentation can and should collect the necessary background information to lessen the shock of the existence of a negative issue or defect. Providing the information and presenting the information up front will lessen the time needed to collect, review and analyze the situation so that a purchaser can get back on track towards signing and closing on a sale.

- **Other Evils.** Things that a purchaser may be looking for:
 - *Litigation.* The existence of litigation involving the condo association could lead to future increases in common charges or assessments payable by the new unit owner as a member of the condominium association.
 - *Leaks into the unit or building.* Leaks will either cause damage to the building or unit which may result in additional costs to a new owner.
 - *Bedbugs.* Eww, no one wants to live with bed bugs. They can be hard to get rid of, travel to other units and ultimately reduce the value of units in the building.



**PREQUALIFY AND VERIFICATION OF
PROOF OF FUNDS (PURCHASER'S
ASSETS AND CREDIT).**

Cash is King: A purchaser who is able to provide verifiable evidence that they have the ability to pay for a condominium unit and closing costs (legal fees and title insurance) without the aid of bank financing or finance contingencies is the "gold standard" of buyers.

Purchaser's Financing: Real estate agents should collect information to evidence the ability to purchase a condo unit in whole or part. The information collected helps a seller determine who the best candidate is (financially) to purchase the unit. Stellar financial credentials can assist a purchaser in presenting their offer as the most attractive to a Seller. There are four (4) general categories that affect a Purchaser's ability to obtain financing and close on the sale of a condominium unit. They are cash, credit, value and building approval.

1

Cash. How much money does a purchaser have to pay towards the sales price and closing costs? The more money available to pay towards the sales price and closing costs, the more likely a lender will approve a mortgage application of a prospective purchaser. Anything less than 20% of the purchase price payable by a buyer above the mortgage amount is subject to the imposition of PMI (Private Mortgage Insurance) making it more difficult for someone to be approved for a loan. A prospective purchaser should be asked for evidence that they have enough money to pay closing costs and the balance of the sales price (a.k.a., proof of funds)

2

Credit. Regardless of the amount of money borrowed, if a person's history of making payments to others who have extended credit is checkered with instances of late payments and defaults, it is less likely a buyer will be approved for a loan.

3

Value. Determining the estimated appraised value of the unit by collecting accurate comparable sales in the building (or in the immediate area) will provide an accurate picture what the unit is worth and the likelihood that a prospective purchaser will be denied under a loan application due to a low appraised value. Determining the likely appraised value of a unit being sold will assist in vetting a prospective purchaser who might be offering to purchase at a lower sales price. A purchaser offering to purchase at a lower sales price may be more viable where they are offering to pay more cash up front and a lower mortgage amount (creating a higher loan to value ratio). This will make it more likely that a loan application will be approved if the unit is realistically going to appraise at a lower price.

4

Approval. Determining the approval of the Condominium Building by a particular prospective lender or ascertaining which lenders have historically approved the building will provide a better sense that the loan will actually fund and the sale will close.

⇒ **Offer assistance with loan application:** An agent can become familiar with the information and documents needed to make a loan application and offer guidance in assembling the package to a prospective loan officer. While purchasers may not want their agent to be familiar with their personal finances, they will appreciate being led through the process which can be overwhelming. Although this is not the agent's job, it does make purchasers more comfortable, develops a trusting relationship and speeds up the process towards closing.

AFTER THE LOAN APPLICATION HAS BEEN SUBMITTED

⇒ **Provide a list of insurance companies and agents:** An agent may be able to find out from the Seller or other unit owners insurance companies that have insured units in a particular condominium building. If no such information is available, a list of reputable highly rated agencies who offer policies to insure condominium unit owners can be provided to prospective purchasers.

⇒ **Measuring the pulse of the deal:** Agents can help monitor time sensitive aspects of a transaction like:



— *Mortgage Contingency Dates.* The date upon which a purchaser must either produce a mortgage commitment, request an extension of the mortgage contingency date or cancel a sale if permitted under the terms of a contract.

— *Violations.* Although most open violations against the underlying building will not interfere with the closing of the sale of a condominium unit, an open violation existing against a particular unit will likely prevent a lender from funding a loan.

- Expired TCOs or open permits. Temporary Certificates of Occupancy ("TCO") or open permits affecting a unit will often prevent the closing of a sale of a condominium unit as a lender will not fund a loan financing the purchase unless the TCO has been renewed or converted to a permanent certificate of occupancy and a permit has been signed off or withdrawn of record.
- Application for a waiver of a right of first refusal. It is usually the obligation of the Seller to obtain a waiver of a condominium association's right of first refusal. Without this document, the parties cannot close.
- Common Charge Letter. The Seller is responsible for obtaining proof that all common charges existing against the unit being sold have been paid in full as evidenced by a letter from the condominium association or the building's managing agent has issued.
- "Poke them with a stick". Although an agent cannot force the parties to complete or finalize the above outstanding issues, they can remind the buying/selling parties or their attorneys that these potential road blocks continue to exist and should be addressed or risk delaying the closing process.

AFTER THE APPROVAL OF THE PURCHASER'S LOAN APPLICATION AND APPRAISAL



“On the 5 yard line” (another sports reference): After a purchaser's financing has been approved, an agent may wish to remind the parties:

- That it's time for the parties to plan moving. It may be fruitful to provide a list of local movers to the seller and purchaser. If an agent has developed relationships with local area movers, the moving companies will (hopefully) treat the parties with care as they came from a valuable consistent referral source.
- That the unit needs to be inspected in anticipation of closing. The coordination of pre-closing examination of the condition of the unit is one of the most important functions agents can provide, after collecting and providing due diligence documents. Many times the inspection is the day of closing. An agent attending a pre-closing inspection should be able to take photos and/or videos as well as the attorney's contact information. It is helpful to be able to send visual evidence to the attorneys as a heads up. A lot of times, if given adequate notice, the attorneys can negotiate a credit or terms of escrow to solve a particular problem prior to closing.
- That they need to get certified funds in preparation of closing from a bank account. Just prior to closing, Purchasers will be nervous and may not realize that the funds being used for closing which are held in a brokerage account will need to be moved to an institutional bank to obtain bank checks as brokerages do not typically have the ability to provide certified funds.
- That the seller and the buyer may need a copy of an agent's sales commission invoice. The seller will need an agent's invoice as clarification of the commission amount that is to be obtained out of the sale proceeds. The Purchaser will need a copy of the invoice to give to their lender who will need to list the amount of the sales commission on appropriate closing disclosure documents required by their lender.

AT THE CLOSING AND AFTERWARDS (Touchdown)



- ⇒ Closing documents and agency disclosures. Do not forget to get documents signed that your brokerage needs collected and submitted.
- ⇒ Please make sure the parties exchange phone numbers to facilitate inspections as part of any post-closing occupancy by the Seller. If necessary, please be available and present for post-closing inspections.
- ⇒ Please provide the purchasers with utility registration information for their new home.

An agent's familiarity of the closing process and potential roadblocks to be avoided will expedite the closing process, ensure that the agent receives their rightfully earned commission, lessens the anxiety of the Purchasers, which will result in good feelings and future referrals.

FAMILIARITY DOES BREED SUCCESS!

REAL ESTATE AGENTS CHECKLIST

FAMILIARITY BREEDS SUCCESS

- Determine the needs of the parties.
- Assemble a sales team

INFORMATION IS POWER THAT PUSHES THE DEAL FORWARD

- Collect due diligence

PREQUALIFY AND VERIFICATION OF PROOF OF FUNDS (PURCHASER'S ASSETS AND CREDIT)

- Prequalify the purchaser
- Assist on the loan application

AFTER THE LOAN APPLICATION HAS BEEN SUBMITTED

- Refer list of insurance agents
- Measure the pulse of the deal

AFTER THE APPROVAL OF THE PURCHASER'S LOAN APPLICATION AND APPRAISAL

- Refer list of movers
- Coordinate inspection
- Certified funds reminder

AT THE CLOSING AND AFTERWARDS

- Commission Invoice
- Collect required agency documents
- Facilitate post-closing inspections
- Provide utility registration information

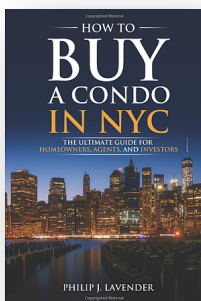


Thank you for reading this article and attached agent check list. You may find the article on my blog:

www.lavenderlawblog.com and the interactive check list at www.gocondo.nyc

If you wish to purchase my book, "How to buy a condo in NYC" is published on Amazon.

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