

Make a list and check it twice- contracts can be naughty or nice

As we close out the year Judicial would like to remind you of ten essential considerations when reviewing your next residential contract.

One – Mortgage Commitment Contingency. Read the words carefully. The paragraph provides only that the purchaser receive a mortgage commitment, and not that he receives the money. In this climate of bank upheaval provide for a fully funded mortgage closing. Be further aware that if the new bank requires your client to sell his house or pay off a credit card that is considered a firm commitment. Particularly important, the paragraph does not allow the purchaser to apply for any governmentally insured loan including VA and FHA.

Two- Brokers. With deals falling through with monotonous regularity make sure you don't owe a real estate broker a commission at the end of one of these disasters. Always add the following to the agreement: "The commission is payable only if, as, and when title actually closes."

Three- Conditions to Closing. Purchaser is entitled to a C of O for all existing structures. Attorneys must place no reliance on the title company as this is not an insured item. Instead, talk to your client; carefully compare the survey and physical inspection to what the C of O covers. It is a myth in NY City that anything in existence prior to 1938 is legal. Plans and approval were always required. If you're buying a 3 family property make sure the contract says that.

Four- Acceptable funds. Be aware of the words 'net mortgage proceeds'. This is the money the buyer will actually have available at closing; everything else must be bank or certified checks.

Five- Notices. Registered or certified mail only. If you want to use overnight or fax it must be added to the contract.

Six- Deed Transfer and Recording Taxes. Yes, the seller is generally responsible. Be aware that condo contracts shift that burden to the buyer. Mansion and Peconic Bay Taxes are paid by the buyer.

Seven- Personal Property. Interrogate your client. Everything he expects to come with the house must be in writing. Make a seller aware that anything he excludes must be removed.

Eight- Insurable Title. You are not getting a marketable title. You are getting a title policy which contains no exceptions not contemplated in the contract.

Nine- Closing Date and Place. Be clear with your clients that unless severe monetary penalties are provided, it is impossible to guarantee a closing date.

Ten- Purchase Price. Lawyers Beware of Seller's concessions NY now has a cautionary Ethics Opinion (817) making your involvement in such a transaction risky business. See Take Judicial Notice January 7, 2008.