

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.