

# LAW OFFICE OF JOHN P. BRADBURY

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## CO-OP/CONDO TRANSACTION OVERVIEW

It is difficult to estimate how long the process will take, from acceptance of the bid to closing. Assuming a loan can be secured in a timely fashion, one can move from contract to closing on a condominium in about 60 days. However, the cooperative process is more involved, and 60 to 90 days is not unusual. The steps to purchase or sell a co-op or condo are very similar and outlined below.

### AFTER A BID IS ACCEPTED

After a bid is accepted, seller's attorney will begin preparation of the contract of sale. During that time, purchaser's attorney will perform 'due diligence' by examining the offering documents and financial condition of the subject premises to determine if there are any legal or financial problems with the building where the apartment is located. Reviewed documents include:

- Offering Plan
- Amendments
- By-Laws
- House Rules
- Financial Statements
- Title Report (Condo)
- Minutes - reviewed at the managing agent's office (Co-op)
- Proprietary Lease (Co-op)

### Inspection

Most units are offered by the seller in "AS IS" condition subject to the promise, by the seller that the major operating systems will be in working order at the closing. An engineer's inspection is not normally associated with a New York co-op or condo transaction. If the unit is located on the ground or top floor, an inspection is advised specifically for water damage or vermin.

### Financing Contingency Provision

Almost every real estate contract is subject to the purchaser being able to obtain a mortgage commitment from a lender. A purchaser is usually given 30 days to obtain a loan commitment by the seller. A purchaser must act in good faith, promptly apply for a mortgage loan, and fully cooperate with the request of the lender during this process. If the purchaser cannot obtain a mortgage commitment, usually either party may cancel the contract, and the contract down payment shall be returned.

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A contract, lacking a financing contingency provision, does not allow for a purchaser to receive a refund of the contract down payment if they are unable to procure financing. As lenders use appraisal value in determining whether they will issue a loan, a purchaser should be wary of making any representation about their ability to obtain a loan even though they have completed a pre-qualification process. Should the appraisal value be less than the sales price, the purchaser would be responsible to fulfill obligations of the contract by providing the difference out of their own funds.

## CONTRACT

The contract, usually drawn by the seller's attorney, states the responsibilities of the Purchaser and seller. Each attorney will make changes or additions to the contract that may be necessary to protect their client's specific interests.

Your attorney should review these technical aspects of the contract with you, in particular, your rights, responsibilities and conditions under which you are agreeing to purchase or sell the unit. Once the contract is executed, the parties are bounded by the terms and conditions negotiated by the parties. It is the primary role of the real estate attorney to ensure that purchasers fully understand their obligations BEFORE they executed the contract.

Purchaser will sign four copies of the contract and provide a personal check payable to the order of the seller's attorney (usually equal to 10% of the purchased price). The contract deposit can be negotiated between the parties on a case by case basis. The contracts and the down payment check are then delivered to the seller's attorney for seller's signature.

The sellers' attorney will hold purchaser's down payment in his trust or escrow account until closing. Thereafter, the seller counter-signs the contract, the seller's attorney signs the contract acknowledging receipt of the down payment and two fully executed copies are returned to purchaser's attorney. It is important to note that until all parties have signed the contract, and it has been delivered, the seller can still entertain and accept other offers.

After receiving the contract is fully executed, purchaser should promptly submit their final mortgage application if they have not already done so.

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## APPLICATION

By now, purchaser will have received from their real estate agent the board requirements and application materials. The application materials can be similar for a cooperative and condominium. However, the actual process is quite different. Purchaser will work to complete all of the required materials which typically include:

- application
- financial statement with all requisite supporting documents
- two years of tax returns
- bank statements
- letters of personal
- letter of financial reference,
- letters of professional reference
- the contract of sale
- loan commitment letter (if financing) indicating that your loan is in place, etc.

When the "package" is complete, it will be reviewed by your real estate broker, and then, assuming it is accurate, it will be forwarded to the managing agent for review. Upon determination that it is in order and that credit checks were acceptable, the package will be forwarded to the Board of Directors. No applications will be accepted by a Managing Agent unless they are complete. The approval process can take approximately 3 to 8 weeks after submission of the "board package".

## CONDO BOARD APPROVAL

Typically, the entire process moves more quickly when purchasing a condominium. In the case of a condominium, there is generally no formal interview. The application will be reviewed, and if all required materials are included and in order, an approval is typically granted.

The sale of a condominium is conditional upon the Board of Manager's issuing a Waiver of the Right of First Refusal, unless you are purchasing directly from the developer. Your purchase contract provides that you promptly submit your application for board approval after issuance of a financing commitment, if any. You must cooperate with the condo board requests and provide any documentation it requires to issue the waiver.

## CO-OP BOARD APPROVAL

In the case of a cooperative, if your application meets initial approval, you will be invited to be interviewed by the board or by an interviewing committee.

The sale of a co-op is conditional upon the co-op board approving the purchaser unless you are purchasing directly from the sponsor. The contract provides that you promptly submit your application for board approval after issuance of a financing commitment, if any. You must cooperate with the co-op board requests and provide any documentation it requires to approve your purchase.

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Unlike condo's, each co-op board establishes the financial requirements for prospective purchasers in their building. Co-op boards set financial limitations on the amount of money a prospective purchaser may borrow in order to conclude the transaction. (For example, many co-ops allow a purchaser to finance only 50%-75% of the purchase price.)

## PREPARING FOR CLOSING

Once all the contingencies are met, the seller and purchaser are prepared to proceed to closing. The settling of the closing is usually coordinated by the purchaser's attorney. The following parties must appear at a closing:

- Seller & Seller's Attorney
- Purchaser & Purchaser's Attorney
- Purchaser's Lender's Attorney
- Real Estate Agents Involved,
- Title Company Attorney (condo only)
- Seller's Bank Attorney (co-op only)
- Representative of Managing Agent (co-op only).

A co-op closing is ordinarily held at the office of the Managing Agent for the apartment corporation or lender's attorney's office. A condo closing is ordinarily held at the office of the lender's attorney or seller's attorney's office unless it is a developer sale. In the latter case, it is held at the developer's attorney's office.

## CLOSING

A Real Estate closing may appear to be a bewildering flurry of papers, but it boils down to three independent events occurring simultaneously.

1. the purchaser receives title to the condominium or the stock certificate and proprietary lease of a co-operative corporation
2. purchaser's bank closes its loan and issues its loan proceeds to the purchaser, who in turn transfers them to the seller as part of the balance of purchase price
3. purchaser pays the remaining balance, if any, of the contract price due
4. seller and purchaser pay their respective closing costs
5.
  - a. title company guarantees both the bank and the purchaser that the purchaser is obtaining good and marketable title free of all judgments, mortgage and other items (condo)
  - b. any liens on the co-op shares, reflected on the UCC search, are satisfied (co-op).

After the closing, you will receive a Closing Statement from your attorney detailing the financial aspects of the closing and copies of the documents executed at the closing.