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LEGAL KNOWLEDGE

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BUYERS  
GUIDE





# The Complete Buyer's Guide

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# INTRODUCTION

Whether you are purchasing your first or 40th property, homebuying is a very exciting venture and one that needs adequate research and clarity. We understand the process and know that it can get complicated.

Choosing the right agent and attorney for your homebuying journey can mean a difference of tens of hundreds (and even thousands) of dollars. All costs/fees needs to be handled swiftly, calculated separately and done correct.

However, buying a home continues to be one of the biggest decisions many Americans make in the course of their lifetimes and we want to help make sure you are completely covered. From beginning to end, this guide will be in a chronological step-by-step order of how to buy your first (or 40th) property.

Ask Yourself:

Have I started my search for a home?

Do I know the different types of homes one can buy, from apartment style co-ops to townhouses and even multi-family homes?

Do I know of any specific areas that I may like to live or own property in?

Do I know how to look for a good and honest agent/real estate attorney/broker?

These are all questions we get very often, and we will tackle each one with depth and charisma. A good homeowner/businessperson knows what to expect and knows the foundations of their venture. Let's start with the very basic.







## 2

## TERMINOLOGY

## RESIDENCY TYPES

**Co-Ops:** This stands for “**Cooperatives**” and this residency is slightly more complicated than a regular Closing. A Buyer would buy shares of a corporation, of which said Corporation owns the building/real property. Title Insurance is optional and downpayment is usually more than the standard 10% of purchase price, more so 20-25%. However, they are generally less expensive than Condos. In order to buy shares/unit, you would need approval of the Corporation’s Executive Board or Membership Committee. Boards may impose restrictions on use (sublets, pets, etc..) and carry maintenance charges. Tax abatement is only available to Owners/Buyers who use property as primary residency.

**Condominiums (Condos):** A Buyer would own a single unit within a building or a lot. However, these do have maintenance charges attached, per unit. Property rights are limited by the declaration of the condo and the bylaws. Tax abatement is available to Owners/Buyers who use property as primary residence.

**Multi-Family Homes:** Similar to Single-Family Homes, but with more than one unit. All of these units must be purchased together and not separate.

**Single Family Homes:** A Buyer would own both the building and real property. This property comes in various styles but are built on a single lot. A backyard may or may not be included. There is privacy between the bedrooms, no shared walls or floors with other tenants. Includes room for storage and no maintenance charges. Generally, more expensive than the average apartment condos and co-ops.

**Townhouses:** A Buyer would own the house and the real property. Common charges exist for common areas which are maintained by an Association. Owners/Buyers have some responsibility such as exterior maintenance (mowing lawn, plowing snow, etc.).

## REALTOR / ATTORNEY LANGUAGE

**Appraisal Value (Price):** The total price of the home/property in question as decided by the Appraisal inspection. This price may be lower or higher than the Sellers price.

**Buyer:** Person with good economic standing and a lot of excitement to purchase a home. A successful Buyer turns into an Owner.

**CEMA:** This stands for the “**Consolidation Extension and Modification Agreement.**” This is available when seller has a mortgage on the property and the Buyer needs a mortgage to buy it. This is very common for many real estate ventures, but not for Co-Op transactions. This agreement allows the Buyer to take over the existing mortgage and avoid any unnecessary transactions. This agreement reduces taxes for both parties involved: The Buyer pays less in mortgage recording tax; the Seller pays less in NY state transfer tax.

**Closing:** This term represents the conclusion of a transaction, regardless of Buyer or Seller party. Both party clients, attorneys, and realtors/brokers should be satisfied with transaction. In technical terms, the transaction would be the transfer of title/deed of property from one to another, Seller to Buyer. We guarantee your satisfaction with our attorneys.



**Contingency Clauses:** A requirement or condition that must be met in order to proceed with the real estate purchasing or selling of property. Usually within the Contract of Sale and must be met before signing.

**Contract of Sale:** A legally binding formal contract for the transaction of property. This part of the process is provided by the Seller's Attorney

**Disclosure Law:** This New York State law particularly deals with the Sellers party. Sellers must disclose defects related to the property in questions (there are exemptions, ask your attorney). This disclosure is required prior to Contract of Sale signing. Failure to disclose to the Buying party, allows the Buyer to be entitled to up to \$500.00. However, Buyers must always use caution and proper inspection before purchasing a home.

**Downpayment:** The money you have saved or gathered for up-front purchasing of a home. Usually, if the Lender is a Bank, they will ask for about 20% of entire purchase price. However the range of downpayment can be from as little as 3.5% or 5% (if using VA assistance) up to 25%.

**FIRPTA:** This stands for the "**Foreign Investment in Real Property Tax Act of 1980.**" This act was created for all foreign Sellers, of which a Buyer must withhold about 15% of all costs for FIRPTA. When the Seller is not foreign, the Buyer should obtain a FIRPTA affidavit and this varies according to whether the Buyer/Owner will be using the property in question as primary residency.

**Home Sale Gain Exclusion:** Federal Act that takes taxes off the first \$250,000 that a Seller makes on a sale. Specific conditions have to be met in order to receive this tax break. Ask your real estate attorney for more information.

**Homeowner's Association (HOA):** When searching for a home, you may find that some neighborhoods have Homeowners Associations and so forth, they will also have dues associated by that group. These dues are meant for upkeep of the neighborhood, general maintenance and other security measures. Make sure to keep this in mind when purchasing a home, as it will be added costs.

**Homeowner's Insurance:** For protection of the Lender, usually all Lending companies will require their homebuying clientele to purchase homeowner's insurance for the protection of the property, in case of natural disasters, catastrophes, etc.

**Lead-Based Paint Disclosure Form:** A form required of a Seller to give to Buyer regarding the conditions of a home, especially if the home was built prior to 1978. This is a standard form common in real estate transactions.

**Loan Commitment Letter:** A promise letter coming from the Lender to the Buyer regarding the precise amount of the loan and its promise to provide. It regards all terms and conditions of the loan, its interest, its lifespan, and monthly payments.

**Pre-Approval Letter:** A written notice by your bank representative (Lender) indicating that after thorough research of your credit report, bank statements, current income, and analysis of all your assets, an potential amount of money may be lent to you. This is a strong confirmation letter of pre-approval which many Sellers will require before committing to a Buyer.

**Pre-Qualification Letter:** To be pre-qualified, you would need to speak to your Bank/Lender, give them a simple overview of your current financial situation. This would include a brief analysis of any debts, current income, assets, and credit score if asked. They would then make a simple calculation from your current status and give you a range amount for a potential loan. You may receive higher or lower depending on a deeper analysis of your current financial status.

**Property Condition Disclosure Form:** A form that must be filled out by the Sellers party describing the exact conditions of a home, as dictated by the New York State Disclosure Law. Though hiring an inspector is not necessary, it may be helpful in finding out all the defects of a property and disclosing all information to the Buying party before Closing. Any homes made prior to 1978, require a Lead-Based Pain Disclosure.

**Purchase Price:** The total price of the home/property as stated in the Contract of Sale by the Seller and agreed to by the Buyer.

**Seller:** Person ready to sell their property/home.

**Settlement Statement:** Also known as a **Closing Statement**. An itemization of the full transaction including fees/costs to both parties involved. This document will need to be signed (to be deemed fully executed) by all involving parties of the transaction. Once Closing is done, this document should be kept.

**Staging a Home:** Since most of the research done by Buyers involves an online presence, the Seller will post pictures of the property they are willing to sell on a realty website, publish it in a newspaper, or more. This also involves the showing of the home by the realtor/agent.

**Title Insurance:** A type of insurance specifically for homeowners and/or lenders of property. This insurance protects against any and all legal issues regarding the Title of the property in question. Your real estate attorneys will help you obtain this type of insurance and choose the proper Title Company for you. Title insurance purchasing is optional for Co-Op residencies.

**Title Search (By Title Company):** This is the proper researching/checking of all public records to ensure that the Seller of the property in question is the proper legal owner of that property. The Title Company will provide public records, Title/Deed of property, and any claims/legal issues against the property or the Seller.

**Title:** The deed or written right to own the property bought/inherited. This is a physical document that provides proof of ownership.

**Mortgage Insurance:** An insurance premium that protects the Bank/Lender if you default on your home loan.



## DIFFERENT TYPES OF CONTINGENCY CLAUSES:

**Appraisal Contingency:** This clause is very suitable for all Buyers who are purchasing a loan from the Seller. The deal concludes with an appraisal showing a certain value above the purchase price of the property. If the appraisal value of the property is lower than the contract value, you get a smaller loan.

**Financing/Mortgaging Contingency:** This clause is very suitable for all Buyers who require a loan to purchase a home. The deal concludes with a Buyer obtaining a loan for a certain amount of money, of which the Buyer has the option to void any and all transactions when the loans fall through. Typically takes about 14-25 days.

**Inspection Contingency:** This clause is suitable for all Buyers alike, especially when purchasing a home. The deal concludes on a satisfactory property inspection and review of all disclosures. The typical inspection period is about 14 days (short time frame). Based on inspections, negotiations will take place between Buyer/Seller parties and will be necessary on repair costs. Any and all properties must be inspected at least once.

## DIFFERENT TYPES OF PRIVATE LOANS FOR A HOME:

**Adjustable-Rate Mortgages:** Involve a very flexible rate and payment plan. They fluctuate according to market or Lender conditions.

**Fixed-Rate Mortgages:** Involve a fixed interest rate. Monthly payments are due, including interest payment until loan is completely paid off.

**Low Downpayment Loans:** Loans of which Lenders have very affordable terms for their Borrowers, such as lower downpayment percentages than the average 20% as expected by most Lenders.

**Veterans Affairs Loans:** Are provided by Lenders for those citizens who are veterans of the United States. Though not all Lenders participate in the reproduction of loans, many Banks and Mortgage companies do offer these private loans. The VA will guarantee a portion of the private loan, alongside have very affordable terms.

## DIFFERENT TYPES OF TAXES:

**Flip Taxes:** Are only for Cooperative residency types (Co-Ops) and are paid by the Sellers, but this can change with negotiations between both parties. This particular tax is an actual "fee" for having a co-op residency transaction. Not deductible as a property tax, but more so, a transfer fee.

**Mansion Taxes:** Similar concept to the Real Property Transfer Taxes, but for properties with a purchase price over \$1 million. For houses over \$1 million, the tax is about 1% of purchase price and this is paid to the Buyer. This should be paid within 15 days of Closing. There is no deductible.

**Mortgage Recording Taxes:** Only applies to those who are buying a mortgage, meaning purchasing property of whom the current Seller has a mortgage loan on. This is very common. This particular tax is paid by the Buyers and it ranges from 1.8 – 1.925% of the existing mortgage.

**Real Property Transfer Taxes:** Only if property is based in New York City. These taxes are typically paid by the Seller and range from 1-2.6% of the purchase price of the property. Rate depends on the type and value of the overall property in question.



# 3

## WHAT CAN ATTORNEYS DO FOR YOU?

When purchasing a home, the State of New York requires any and all citizens to obtain a real estate attorney for the supervision and negotiation of their real estate transaction. However, if this is your first home purchase, you won't want to take chances and make big decisions without the consultation of an attorney. As your first venture, we want to make sure the process is smooth and as successful as possible. We also want you to be fully and legally covered in case the negotiations run long and/or have obstacles.

### WHAT CAN WE DO FOR YOU?

Well that's simple. As real estate attorneys, we won't just tell you where to sign and when to show up for negotiations. We want you to know the process, we want you to participate and see the quality of work we provide.

**Draft Contract of Sale**

**Negotiate Contingency Clauses**

**Order Title Report and Choose the Right Title Company**

**Handle All Calculations of Costs/Fees/Taxes**

**Ensure Compliance with FIRPTA**

**Request Documents that May Not Otherwise Be Provided To You**

**Assist with Potential Creation of LLC/Corporation for your Property**

**Provide Hands-On Communication with the Sellers Realtor and Real Estate Attorney**





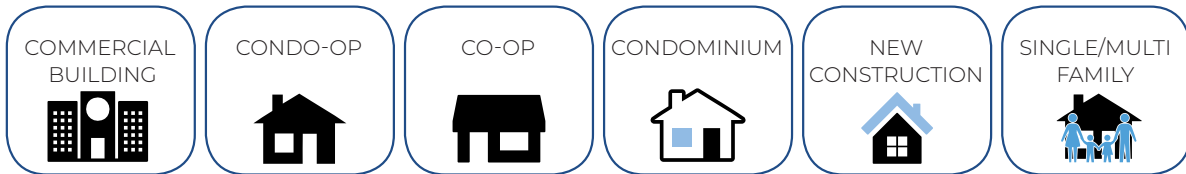
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## WHAT TO DO: STEP-BY-STEP

### LETS BUY A HOME – ONE STEP AT A TIME

#### 1 ► What Type of Property Do You Want and Where?

Lets start out with the basic. What are you looking for? It is important to know exactly what you want before searching for a home. It will be easier to know what to settle and negotiate for when you already have a picture of what you want in mind.



Do you know what neighborhood? Getting an agent/broker that knows that particular area will be a huge advantage when it comes to the search. Experts of the neighborhood and its various factors such as the people/neighbors, parks, restaurants, key landmarks/features, urban renewal projects, foreclosed homes nearby, schools, churches, an help you make a better decision.



Start looking/researching for homes in your price range. It is easy to find a home we like, but may not be financially responsible for us to obtain. Remember that with the proper real estate team, you can try to negotiate for a lower purchase price and other fixtures the home may have.

Avoid getting emotionally invested in a property. Keep shopping around if you must and do not feel discourage if you cannot find a home immediately. It is best to have different options you want to bid for and tell your real estate agent/attorney regarding them.

#### 2 ► Build Your Team.

Getting a Real Estate team (agent/broker and attorney) is very important. A good agent will make sure you find the appropriate home. A good real estate attorney will protect you contractually and bring peace of mind throughout the whole purchasing process. An experienced legal team will help you avoid the many legal risks and overcome obstacles to protect your investment and your liability.



Remember that you are essentially making one of the biggest decisions of your life and it is important for you to hire an agent and attorney that will understand this and provide you with the best service to turn the homebuying dream into reality. It is important to remember that there are many risks and many ways for a Closing to fail, be prepared to hire the best team possible to defend you and keep your best intentions in mind.

Be honest with them and eventually you will have a good relationship with them. Find a team you are compatible with and one you can trust. Remember that you are the boss.



### 3 > Credit Does Matter!

No matter the purchase, when acquiring a loan for the purchase of a home, car, or material, the chances are dependent on your current credit score. If your current score is too low, then you may be asked for a co-signer (conditionally) or you will be denied. On the other hand, a high credit score means that you are more likely to get a lender to help you secure a loan/mortgage. Generally, all scores at or above 720 are pretty strong and it will be easier to obtain a lender for your desired home/car/etc.



To improve your credit score, you may need to close some lines of credit and be sure to make all payments on time. Do not open new lines of credit prior to obtaining a pre-approval or pre-qualification letter, in case of a slight drop of your credit score.

Credit history, as well as current score matters! Remember that a credit score is the summation of trust that a lender calculates you deserve. However, there exists a direct relationship between good credit history and good credit score. Just be aware that spending habits do matter and responsibility is key!

### 4 > Pre-Qualification, Pre-Approval, and Loan Commitments

If you know that you will need a mortgage loan and you have already started your search for homes, then pre-qualification and pre-approval letters are your next step. Many Sellers require potential Buyers to obtain pre-qualification/pre-approval letters to prove a good financial standing. It is good to prepare yourself as a Buyer and have these pre-conditions taken care of. Now what are these letters and what do they mean?

**Pre-Qualification** is the easiest and definitely the least time consuming. To be pre-qualified, you would have to speak to your bank, give them a simple overview of your current financial situation which would include an overall analysis of your debt, income, assets and more. They will ask you about your credit score and credit history. Your banking institution will essentially be calculating the amount of loan you would be likely to receive, dependent on your financial standing at the moment of call. If approved, you will be mailed a written notice from your bank representative. This process is simple to do, as it can be achieved with a phone call or be done online within minutes. However, this process does not require a full detailed analysis of your financial history and current standings, therefore, it does have less weight than a pre-approval letter.

**Pre-Approval** is a written notice by your bank representative confirming approval of a loan after thorough research of your credit report, bank statements and current income, analysis of all assets/debts, and more. If approved, you will receive a written notice for an exact loan amount indicating the level of trust, your lending institution or bank is giving you. The beginning step to pre-approval involves completing a Mortgage Application, as well as, paying its application fee. Once completed to the best of your ability and filed, you will be notified of approval or disapproval. Do not be alarmed if you do not have a property in mind when filing the application. If so, leave the "property-related" spaces blank unless otherwise asked.



When pre-approved, you will receive a specific amount in which you may use to purchase a home. You are only able to purchase a home at that amount or below, it would be unwise to go for a higher price.

Being a pre-qualified Buyer is better than not having any pre-qualifications or pre-approvals prior to meeting and consulting with the Sellers Party. However, pre-qualification and pre-approvals have differing weight attached. Sellers prefer pre-approved notices from Buyers by first contact, be aware that it may be best to get pre-approved. However, time does matter, and pre-qualifications are faster to obtain and generally accepted as a first step. Be prepared if asked to be pre-approved prior to the commencement of any transaction and make time for this process to happen.

### 5 > Homebuyers Club – Time to Get Hands-On

Once you have received any and all pre-qualification/pre-approval notices for a specific loan amount, you will be ready to start being more selecting on homes. If you already have a home in mind, this makes the process easier, as you can proceed with the next step regarding bidding for the home. Remember to let your real estate team know of the homes you have chosen as candidates and the requirements for each set by the Sellers party. If you have not started your search for homes just yet, do not be alarmed, this is where you begin.

Now is the time to start viewing the homes, schedule walk-throughs with your agent and research all candidates, their location and any nearby establishments in their area. Keep in mind that when buying a home, you also buy the location you are in, the landmarks/establishments which help distinguish that neighborhood. Locations such as: bars, restaurants, parks, museums, grocery stores, or even churches, do influence many Buyers into thinking about certain homes.

Familiarize yourself with the current Owners of whom you will want to make your offer to, get their contact information and keep tabs on all the properties. Make sure you make a list, rather than a mental note, of which property you liked and the reason behind it.

**Property Address:** \_\_\_\_\_  
**Residency Type:** \_\_\_\_\_  
**County/Borough:** \_\_\_\_\_  
**Bedrooms:** \_\_\_\_\_  
**Likes:** \_\_\_\_\_  
**Dislikes:** \_\_\_\_\_

These are notes that you may want to keep in order to compare and remember each property. Do not forget to take pictures and discuss with your agent what you like best and what you liked least. Be truthful with your agent as they will try to help negotiate, alongside your real estate attorney, what is best for you, which appliances stay, whether repairs are needed and more.

Do not necessarily settle for what you find. Rather, keep looking for the place that suites you and your current financial situation. Find the home that fits the need you want it for. Whether this potential home becomes your primary residence or commercial benefit, be keen to what you want and don't want. Try not to shy away from questions or conversations.

## 6 > From One Offer to the Next: The Bidding War

If you find yourself coming to the end of your search and your list has now been narrowed down to one or two potential homes, then your next step is to ACT Fast.

Ask your agent to send a formal Offer of Purchase for those homes. This would be an official statement to the Seller's party of your interest in their home, including the price you are willing to offer. Depending on market conditions, is it proper or improper to offer a certain amount. Most agents believe that offering five percent (5%) below homeowner's price is reasonable. However, certain market conditions and variables can change this. You may end up paying more for the property because its value increased within the last couple years due to market conditions. Stay in constant communication with your agent, as they will be able to tell you the average market price for certain homes in that area and how the housing market rates affect your purchase.

### A Bidding War.

Homebuying is a complicated process and a trustworthy real estate team is absolutely necessary to enter into a bidding war. An agent will be your best defense against other potential Buyers of the home. When you find a home, the chances that other families/entities are also interested are very likely. They may even want to purchase the home exact same property at a higher price, thus increasing their bid/offer.

Have your agent be in communication with the Seller's party/agent. Make sure that your name and your price is on the table and is known. If you are willing to bid higher, let your agent know that you are flexible with price, but at a reasonable and conscious pace.

### Counteroffers.

This occurs when the current Homeowners notice your offer and find interest in you, but may disagree with the purchasing price. They may change the conditions, contract terms, purchase price, downpayment and more. In return, they will send you a counteroffer, your agent should inform you of any and all notices from the homes you have offered for. Your real estate team will help provide adequate protections on your behalf and negotiate any and all deals regarding the property.

The bidding war can be stressful and can sometimes take its time. There are always wins and losses and it all depends on the Sellers party and how they are willing to negotiate, what they are willing to settle for, and what they are willing to let go. However, as a Buyer, you have influence in what you're willing to offer and settle for.

If no counteroffer is returned and your agent has made you aware of the Seller's party accepting your offer for the home. Then your real estate attorney will start all communications regarding the actual transaction of the home.

## 7 > Offer Accepted – Journey to find the Dream Contract

Your real estate attorneys should be working on contracts which detail every aspect of the transaction for both parties. The Sellers Party drafts the Contract of Sale, alongside any additional Riders which provide additional protections to both parties, more so the drafting party. In response, your attorney will respond with corrections to the contract, negotiate any protections, add protections on your behalf to avoid liability issues, fix all necessary repairs of the home, seek title from title company and more.



A good real estate team behind you will allow you to be stress-free throughout the drafting and revising of contracts. They will explain to you what each clause in the contracts stands for, what you and the Seller have agreed upon, the purchase price and more. You will then be prepared to sign the Contract of Sale (document discussing transaction) which will detail final pricing, downpayment and outstanding balance for the mortgage loan owed to Seller.

At the time of the Contract of Sale, upon signing, it is customary to give about ten percent (10%) of purchase price as “**earnest money**,” also known as the **Contract Deposit**. This amount is a part of the downpayment cost and is usually held your real estate attorney’s Escrow account. The rest of the downpayment is owed at the time of Closing.



You can choose to give more than the customary ten percent (10%) contract deposit. There is no disadvantage of giving more in advance, it would just mean that your outstanding balance at time of Closing is less.

### 8 > Downpayments: They are Real and We Need to Talk About Them.

A Downpayment is the deposit for the home you are interested in purchasing. It consists of a contract deposit (ten percent) and the remaining ten percent due at time of Closing (based on the average twenty percent downpayment).

Overall, this is the money you have saved up or gathered for up-front purchasing of the home and it is used as a deposit to secure your interest in the home. If you are putting a downpayment, it is mostly assumed that you have a mortgage covering the remainder of the purchase price, but not always. Cash deals prefer to put downpayment as well, meanwhile finishing the rest of the transaction at time of Closing. However, the more you are able to put upfront as a downpayment, the less your monthly payments may become with your Lending institution.

#### How does a downpayment work and how do I know how much to pay?

Downpayments are about ten to twenty-five percent (10-25%) of the purchase price. However, banks usually require a minimum of twenty percent (20%) as previously mentioned. When you have finally selected your home and are satisfied with the walk-throughs and appraisals/ investigations (if already done), then you may want to speak with your real estate attorney regarding the Contract of Sale and how much you are willing to put down. Your real estate attorney will help guide you through the Contract of Sale and help you understand how much you should put down upfront (as downpayment) and what you will have to pay at time of Closing.



If you feel comfortable being able to pay at least 20% downpayment, then you have the option to not purchase mortgage insurance. **Mortgage Insurance** is an insurance premium that protects the Bank/Lender if you default on your home loan. However, usually if you are able to pay a hefty downpayment, then it is optional. However, your real estate attorneys will always recommend the purchase of such, for the “just-in-case” situations.

### 9 > OPTIONAL: Purchasing Application to Board

If purchasing a Co-Op or Condominium, the Buyer's real estate agent is required to provide the Board of Directors/Executives with a purchasing application. This application will need to be approved by the board prior to Closing for the transaction to succeed. If it is not approved, the transaction will not be completed.

### 10 > Closing Time – Add to Your Keychain!

Closing begins once the Contract of Sale and additional protections have been negotiated and both parties are in agreement. The process involves the exchange of checks, signing of final contracts, completing a final walkthrough of the property in question and an exchange of keys. All Closings end with specific documents such as a Settlement Statement and an itemization of the full transaction including fees/costs to both parties involved.

## ENJOY YOUR NEW HOME !



Do not fall into the assumption that once Closing time arrive, all is safe and no complications can arise. There is always wiggle room for error, whether clerical, or just overall changes to the situation at hand. Be prepared for any and all complications and be compliant with all conditions necessary to finish the transaction. There may be last minute changes to the Contract of Sale, an additional rider, additional costs, hidden fees, issues with the title report that must be met prior to Closing and more.

Closing costs range about 2-6% of the purchase price. Ask your attorney for the breakdown of all costs, fees, taxes, and all other expenditures that you may come across.

Don't forget about moving costs and everything else you may need regarding your new home!

Quick Tip



# 5

## THE LOAN PROCESS

Unless you are willing to purchase a home in cash, you may want to start looking for a Lender for a potential loan. Below are descriptions for the different types of home loans that are available to you, some have certain prerequisites or conditions according to who can receive them or not.

**Adjustable-Rate Mortgage** involves a very flexible rate and payment plan. They fluctuate according to market or Lender conditions.

**Fixed-Rate Mortgage** involves a fixed interest rate. Monthly payments are due, including interest payment until loan is completely paid off.

**Low Downpayment Loans** are loans of which Lenders have very affordable terms for their Borrowers, such as lower downpayment percentages than the average 20% as expected by most Lenders.

**Veterans Affairs Loans** are provided by Lenders for those citizens who are veterans of the United States. Though not all Lenders participate in the reproduction of loans, many banks and mortgage companies do offer these private loans. The VA will guarantee a portion of the private loan with very affordable terms.

It is up to the Buyer to decide which Mortgage plan works for them, and which Lenders to obtain their home loan. The prequalification and pre-approval processes will help determine a set amount of which the Lending Company is willing to loan the Buyer. The Buyer will make this decision based on interest rates, APR and the amount they are willing to spend.

### WHAT IS A LOAN COMMITMENT?

Similar to the pre-qualification and pre-approval letters, a loan commitment letter comes from the Lender to the Buyer regarding the amount they are willing to loan. The letter includes all the terms and conditions of the loan, its interest, its lifespan and monthly payments. As long as the Buyer makes all payments on time, they can continue to borrow from the Lender and build a relationship together.

#### Important Notes!

- It is important to understand that many mortgages have lifespans ranging from 15 to 30 years. Within that given timespan, the amount of monthly dues owed to the Lender is higher for the 10 year span and lessens with 30 year span. The longer the lifespan of the loan, the less the Buyer will pay monthly, however the interest rate will increase. Choose the plan that best fits your situation.
- Certain neighborhoods have Homeowners Associations (HOA). If you choose a property within one of these areas, they may have additional monthly or annual dues for maintenance of that particular neighborhood.
- To decide which Lender you want to proceed with, look at the interest rates and annual percentage rates (APR) they offer. The higher the APR, the higher the overall costs will be.
- Purchasing a new home when you already have an existing mortgage is very common. This particular debt will be taken into account when the Lender reviews your application for a mortgage.



## DOCUMENTS NEEDED TO APPLY FOR A LOAN

- Alimony or Child Support Documentation and Earnings
- Asset and Dividend Earnings
- Calculated Bonuses (occupational)
- Copy of Earnest Money Deposit (if able)
- Current Debt (Car Loans, Student Loans, Credit Card Debt, Medical Insurance Debt, etc.)
- List of Addresses and/or Employers (alongside Title of Position and Yearly Income)
- List of Bank Accounts (open lines of credit)
- Pay Stubs of Income (most recent)
- Social Security/Disability Payments (SS/D benefits)
- Tax Returns (2 years prior)
- W-2 Tax Forms (2 years prior)

## OFFER IN, LETS DEAL WITH THE MORTGAGE

After you have acquired a pre-qualification, pre-approval, or loan commitment letter through the Lender, and your agent submitted your first offer, what is the next step?

The Loaning Process begins with the handling of Mortgage with the Mortgage Banker. The Lender will assign you a specialist of which he or she will be able to assist you on obtaining your loan. The Mortgage banker will ask you to submit specific paperwork to them (see above – Documents You Need to Apply for a Loan). If you agree the amount and rate proposed suits your best interest, you will be asked to “lock in” the rate.

Interest rates fluctuate and are very sensitive with market conditions. The rates can vary between Lenders, but should be similar because they are based on your particular credit history and income/asset reports. The option to lock-in a particular rate is for your peace of mind, to avoid increases according to market crashes, economic growth, market expansion and overall, Lender conditions. Usually, a lock-in will give you a specific time frame of which this rate will be frozen. Since the rates can also decrease, locking in is an option that you should talk over with your Mortgage Banker to see what is best for you.

The next step is for the Mortgage Banker to submit your application to a Loan Processor within the Lending company for a homeowner’s insurance quote. Lending companies will require their homebuying clientele to purchase homeowner’s insurance in case of natural disasters or catastrophes. This is a safeguard that all Lending institutions have to protect investments for both the property and the Borrower.

Once your offer is accepted, your Lender will schedule a home appraisal inspection, order title insurance, home inspection, pests/rodents’ inspections and more. Closing transactions shall proceed and the Loan processor (if your loan is approved) shall schedule your Closing date.

Taxes are additional costs that cannot be avoided. You should have a strong legal team to help differentiate the costs on your behalf, because it is important to know up front what you are paying, which taxes apply to you and how much percentage of the overall purchase it may be.



## LETS TALK TAXES

### THE FOLLOWING ARE TAXES THAT MUST BE PAID:

**Flip Tax** are only for Cooperative residency types (Co-Ops) and are paid by the Sellers, but this can change with negotiations between both parties. This particular tax is an actual “fee” for having a co-op residency transaction. Not deductible as a property tax, but more so, a transfer fee.

**Mansion Tax**, similar concept to the Real Property Transfer Taxes, but for properties over \$1 million is purchase price. For houses over \$1 million, the tax is about 1% of purchase price and is paid by Buyer. This should be paid within 15 days of Closing, required to do so. There is no deductible.

**Mortgage Recording Tax** only applies to those who are buying a mortgage, meaning purchasing property of whom the current Seller has a mortgage loan on. This is very common. This particular tax is paid by the Buyers and it ranges from 1.8 – 1.925% of the existing mortgage.

**Real Property Transfer Taxes** are only based in New York City and are typically paid by the Sellers. They range from 1 – 2.6% of the sale price of the property. Rate depends on the type and value of the overall property in question.

One proper way to go around certain taxes would be with the creation/ incorporation of an LLC or Corporation. Main advantage to this particular method would be to pass-through taxation. LLCs are better recommended by our attorneys for the sake of anonymity and flexibility, however, the results are similar. Some Lenders even prefer to give out loans/borrow to LLCs, instead of particular owners. If an LLC is created by a single-member to purchase the property on behalf of the Buyer, then there is no need for that single-member to file separate tax returns.

To create an LLC to purchase property is a very common practice within the New York City area. Most owners, when purchasing multi-dwelling buildings/homes, prefer to have an LLC purchase the property for better management structure. If you wish to learn more, contact your real estate attorneys and they will help assist you in any questions you may have.

You can reach us at (212) 256-1877 or e-mail us at [info@fisherstonelaw.com](mailto:info@fisherstonelaw.com) to schedule a free consultation.





## 7 QUICK TIPS



Cash is king. Sellers prefer cash transactions for the sake of simplicity. These transactions would skip the loaning processes and Sellers are more likely to negotiate purchase price.



Start looking and researching homes in your price range. It is easy to find a home we like but may not be financially responsible for us to obtain. Remember that with the proper agent and attorney, we can help renegotiate purchase pricing as well as protections on the property and yourselves.



Avoid getting emotionally invested in a property. Keep shopping around and have options of homes you want to purchase so that your agent and attorneys can do their best to open lines of communications with the current Owners of those homes.



Remember that you are essentially making one of the biggest decisions of your life and it is important for you to hire an agent and attorney that will understand this and provide you with the best service to turn the homebuying dream into reality. It is important to remember that there are many risks and many ways for a Closing to fail, be prepared to hire the best team possible to defend you and keep your best intentions in mind.



You are hiring them, and you can also fire them. Never be afraid to stand up if you feel that your agent is not doing the best they can do.



To improve your credit, close any lines of credit you have. Do not open new lines of credit prior to obtaining a pre-approval or pre-qualification letter, in case of a slight drop of your credit score. Make all your payments on time and minimize your debt as fast as you can.



Credit history, as well as, current score matters! Remember that a credit score is the summation of trust that a lender calculates you deserve. However, there exists a direct relationship between good credit history and good credit score. Just be aware that spending habits do matter and responsibility is key!



When pre-approved, you will receive a specific amount in which you may use to purchase a home. You are only able to purchase a home at that amount or below, it would be unwise to go for a higher price.



Being a pre-qualified Buyer is better than not having any pre-qualifications or pre-approvals prior to meeting and consulting with the Sellers Party. However, pre-qualification and pre-approvals have differing weight attached. Sellers prefer pre-approved notices from Buyers by first contact, be aware that it may be best to get pre-approved. However, time does matter and pre-qualifications are faster to obtain and generally accepted as a first step, but be prepared if asked to be pre-approved prior to the commencement of any transaction.



If you feel comfortable being able to pay at least 20% downpayment, then you have the option to not purchase mortgage insurance. Mortgage Insurance is an insurance premium that protects the Bank/Lender if you default on your home loan. However, usually if you are able to pay a hefty downpayment, then it is optional. However, your real estate attorneys will always recommend the purchase of such, for the “just-in-case” situations.



Do not break the bank or your wallet with the downpayment. Though it is reasonable to want to pay more up-front, the Sellers party and Bank/Lender will want to know that you still have cash reserves in your own bank account. This will bring forth security for them and it is always wise to keep a certain amount for yourself for any upcoming situations.



Do not fall into the assumption that once Closing time arrive, all is safe and no complications can arise. There is always wiggle room for error, whether clerical, or just overall changes to the situation at hand. Be prepared for any and all complications and be compliant with all conditions necessary to finish the transaction. There may be last minute changes to the Contract of Sale, an additional rider, additional costs, hidden fees, issues with the title report that must be met prior to Closing and more.



Closing costs range about 2-6% of the purchase price. Ask your attorney for the breakdown of all costs, fees, taxes, and all other expenditures that you may come across.



Don't forget about moving costs and everything else you may need regarding your new home!



Incorporating an LLC may help you save money on taxes, especially when the LLC buys the property instead of the particular Buyer.value of your property.

# 8

## FREQUENTLY ASKED QUESTIONS (FAQ'S)

### IS IT BETTER TO HAVE A CASH DEAL OR A MORTGAGE WHEN PURCHASING A HOME?

Many Sellers prefer cash deals for the sake of simplicity. When purchasing a home with cash, there are less transactions than when calculating the mortgage and disbursing the loan. Cash is also more immediate, unlike waiting for a mortgage loan approval or using government assistance programs for downpayments. For these reasons alone, many Sellers prefer cash deals over dealing with mortgages. However, it is very common for a homebuyer to request a mortgage loan to purchase a home and there is no stigma to it.

### WHAT IS THE LONGEST AMOUNT OF TIME I CAN WAIT OR PUT ON HOLD BEFORE MAKING AN OFFER?

When purchasing a home, it is best to act NOW. Home listing, especially in New York City, happen fast and every hour there are new Closings throughout town. It is best to get in front of the bidding war when offering a price to a Seller, instead of being last. In this case, the early bird does get the worm.

### HOW LOW CAN I MAKE MY OFFER AND STILL GET ACCEPTED?

Most realtors/brokers/agents and even real estate attorneys recommend about 5% below Seller's price of property, however, this factor will most likely be determined by the housing market. If certain areas are selling fast due to upcoming investors and gentrification, your offer for 5% below may be rejected and you may lose the home to another Buyer. Always keep in contact with your real estate team to figure out current conditions and variations to the housing market and how they can affect your transaction.

### WHEN CAN I BE SURE THAT THE TRANSACTION IS GOING GO THROUGH AND THE HOUSE WILL BE MINE? WHEN CAN I LET GO OF UNCERTAINTY OF MY ACCEPTED OFFER?

Even if an offer gets accepted, there may be another last-minute Buyer seeking to purchase the home for a higher price than yours. Nothing can be guaranteed unless the Contract of Sale is signed by both parties. Once the Contract of Sale is fully executed, the transactions have no choice but to continue and the Closing will come soon after.

### WHAT IF THERE ARE TITLE ISSUES WITH THE HOME I AM ABOUT TO PURCHASE? CAN I STILL PURCHASE THE HOUSE?

Depending on the issue at hand, may it have to be fixed/repaired/dealt with by the Sellers party. However, if the issues include poor inspection results or more serious hits, then perhaps it is not best property to buy. However, all title issues need to be dealt with prior to Closing, which may push back the Closing date, but is better late than never.

### WHAT IF THE SELLER REFUSES TO DO AN INSPECTION OF THE HOME?

It is customary for a home inspection, appraisal inspection, pest/rodent inspection and more to be ordered when purchasing home, whether from the Sellers or Buyers parties. If a seller refuses to do any inspection, then it may not be worth purchasing that particular home. It is not wise to purchase a home without knowing what it may have, all the defects that may potentially cost you money in the long run.





# 9

## WHAT DOCUMENTS YOU SHOULD KEEP AT ALL TIMES

BELOW IS A LIST OF DOCUMENTS THE BUYER SHOULD KEEP AT ALL TIMES:

- Agent's Agreement
- Contract of Sale
- Addenda/Riders to the Contract of Sale
- Sellers Disclosure Statement
- Home Inspection Report
- Title Insurance Policy
- Property Deed
- Identification (ID) Card

Keep in mind that, we will help keep track of all the documents you need if you choose to stay with Fisher Stone, P.C. We understand the hassle and want to keep compliance with all parties, even after the overall transaction is over.







# SAMPLE DOCUMENTS

## ▶ SAMPLE PRE-APPROVAL LETTER

[Date]

[Client Name]  
 [Street Address]  
 [Apartment/Suite]  
 [City] [State] [Zip Code]

Dear [Client Name]:

CONGRATULATIONS! We're happy to let you know you've been preapproved for a mortgage in the amount of \$\*\*\*\*.\*\*\*!

This **PriorityBuyer® preapproval** letter provides you with an estimate of the loan amount you may qualify for.

What you need to know  
 This preapproval means:

- You've filled out a mortgage application.
- We've check your credit.
- We've conducted an initial automated underwriting review based on the information you provided.

This **PriorityBuyer Preapproval** is not a commitment. You will need to finalize your mortgage application, and we will need to review your financial documentation and review your financial documentation to make a decision on your application. A loan commitment also depends on property acceptability and eligibility, including the area and title. All approvals are subject to change or cancellation if your property does not meet applicable regulatory requirements.

What you need to do  
 Give the following information with the details of your preapproval to your real estate professional. We'll help as you work together to find a home.

Next steps  
 We'll work together to help you finalize your loan application, understand and choose your home loan options, and learn about the home financing process, so you know what to expect.

We're here to help  
 We appreciate the opportunity to help you with your home financing needs. If you have any questions, please call me. I'll be here to help you every step of the way.

\*Annual percentage rate (APR) is the cost of credit expressed as a yearly rate. The APR includes the prepaid interest rate, discount points, fees, and other credit charges that the borrower is required to pay and is a more complete measure of a loan's cost than the interest rate alone. The loan's interest rate, not its APR, is used to calculate the monthly principal and interest payment.

Sincerely,  
 Representative of [Lender]

### Details of PriorityBuyer

Pre-approval Amount: \$\*\*\*\*.\*\*\*  
 Loan Term:   
 Interest Rate:   
 Annual Percentage Rate:   
 Down payment:   
 Principal & Interest:   
 Estimated Monthly Payment:   
 County:   
 State:   
 Preapproval on:   
 Preapproval expires on:

This information is accurate as of date of printing and is subject to change.

► **SAMPLE LOAN COMMITMENT LETTER**

[Client Name]  
 [Street Address]  
 [Apartment/Suite]  
 [City] [State] [Zip Code]

**Subject: Your Commitment Letter**

Dear [Client Name]:

Congratulations! We're happy to tell you that your loan application has been approved based on the terms and conditions included in this Commitment Letter so please be sure to read all the information carefully.

**You're just a few steps away**

Additional documents are needed in order to complete the final underwriting and funding of your mortgage loan. These documents, along with terms and conditions, are explained on the following pages. Please remember that we must receive all documentation required in this Commitment Letter. It's important to submit you required documentation as quickly as possible to ensure an on-time close.

**Contact Information**

We understand that some of the requirements and conditions may sound confusing or technical. All the help you need is just a phone call away.

Name:  
 NMLS ID:  
 Phone:

**Don't change a thing**

Our loan commitment to you is based on the information discussed, as well as information you provided, including your current income, credit rating, and property condition. Please do not apply for additional credit until your loan is closed, as this may affect the approval of your loan.

**Information to keep at hand**

Here are some important facts about your loan, terms and expiration dates. Please refer to this section when contacting us.

---

Customers:	Product:
Loan Number:	Loan Term/Loan Purpose:
Property Address:	Interest rate/APR:
Occupancy:	Monthly payment amount:
Property Type:	
Sales Price/Loan Amount:	This letter expires:
	Rate Lock-in Expiration Date:

---

\*This APR is an estimate based on information we have at this time. This APR is not a committed term under this commitment letter, and it can change based on factors such as changed in third party fees or the terms of your loan.

On behalf of the entire [BANK/LENDER NAME], thank you for choosing us for your home financing needs.

Sincerely,  
 Representative

## MORTGAGE LOAN COMMITMENT

Borrower Name(s):	Lender:
Borrower Mailing Address:	Loan Number:
	Property Address:
Commitment Expiration Date:	Date:

It is a pleasure to notify you that your application for a mortgage loan has been approved subject to the following matters set forth below and on pages 2 and 3.

**INSTRUCTIONS**

Please sign, date and return Lender's copy of this commitment, along with any required fees and items requested, to the Lender by the date hereof, or at the option of Lender, 10 days of the date hereof. Should you have any questions, please call at (123) 456-7890.

[LOCATION (CITY, STATE, ZIP)]

This approval is subject to the commitment. Due to the fact that interest rates are subject to change with notice, your approved payment and loan amount may change if interest rates increase or decrease.

**EFFECTIVE AND COMMITMENT FEE**

This commitment will become effective upon compliance with the terms herein and, if applicable, the receipt of your check in the amount of any non-refundable commitment fee ("commitment fee"). It is understood and agreed that if this mortgage loan is not settled in accordance with the terms and conditions of this commitment, the Lender shall retain this fee as earned charges for the origination and approval of this loan.

**AMOUNTS, TERMS AND FEES**

Amount of Loan	\$ ****.**
Initial (Contract) Interest Rate	*.**%
Loan Term	**** months
Amortization Type	****
Balloon Term (if applicable)	****
Loan Type	****
Lien Position	****

**PAYMENT (P & I)**

Your initial  interest only  principal and interest (P&I) amount is \$ \*\*\*\*.\*\*. This amount does not include any escrowed amounts and may change if there is a change in loan terms.

**ESCROW**

An Escrow Account is not required.  
 An Escrow Account is required.



Even if an Escrow (Impound) Account is not required at time of settlement, subject to the terms of your specific loan documents, the Lender may set up and require an Account should the taxes or insurance on the subject property ever become delinquent.

The Continuation of Commitment Conditions is on page 2 and is made a part of this Commitment.

**EVIDENCE OF TITLE** The Evidence of Title is to be provided to the Lender and must indicate no liens, encumbrances, or any adverse covenants or conditions to title unless approved by Lender. The Evidence of Title must be issued from a firm or source, and in a form, acceptable to Lender. Borrower will be charged for the cost of providing such title and the cost of recording documents, all of which will be ordered by Lender unless requested otherwise.

**CANCELLATION** The Lender reserves the right to terminate this commitment prior to the settlement of the loan in the event of an adverse change in your personal or financial status, or if the improvements on the property are damaged by fire or other casualty.

**REQUIRED ITEMS OR CONDITIONS**  
All Items Listed on the Commitment Conditions Addendum Apply.

**THE FOLLOWING CONDITIONS MAY APPLY TO YOUR LOAN DEPENDING ON THE LOAN TERMS.**

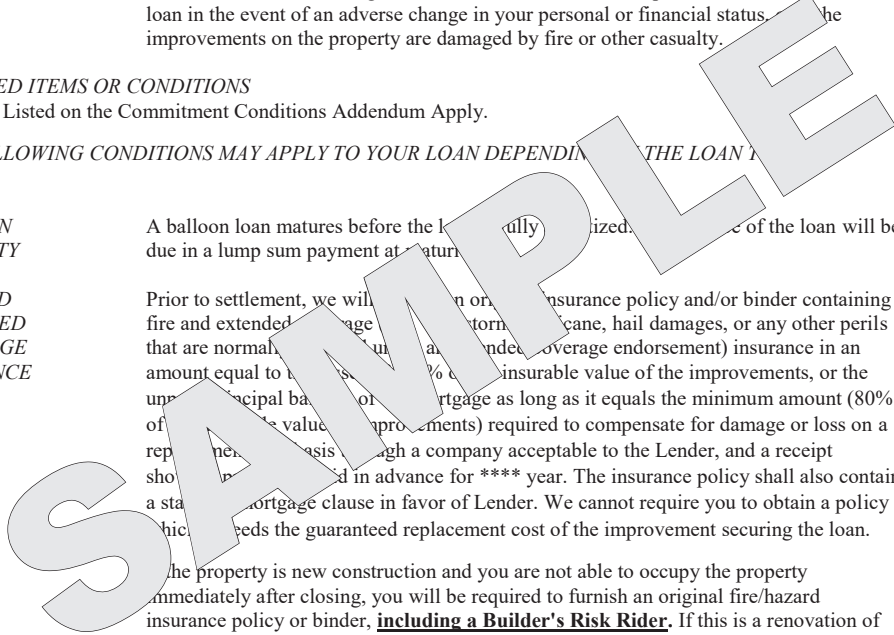
**BALLOON MATURITY** A balloon loan matures before the loan is fully amortized. The entire balance of the loan will be due in a lump sum payment at maturity.

**FIRE AND EXTENDED COVERAGE INSURANCE** Prior to settlement, we will require an original fire insurance policy and/or binder containing fire and extended coverage (including windstorm, hail, lightning, earthquake, and any other perils that are normally covered by a standard fire insurance policy and/or coverage endorsement) insurance in an amount equal to the lesser of the insurable value of the improvements, or the unpaid principal balance of the mortgage as long as it equals the minimum amount (80% of the value of the improvements) required to compensate for damage or loss on a replacement cost basis through a company acceptable to the Lender, and a receipt showing the policy was issued in advance for \*\*\*\* year. The insurance policy shall also contain a standard mortgage clause in favor of Lender. We cannot require you to obtain a policy which exceeds the guaranteed replacement cost of the improvement securing the loan.

If the property is new construction and you are not able to occupy the property immediately after closing, you will be required to furnish an original fire/hazard insurance policy or binder, **including a Builder's Risk Rider**. If this is a renovation of an existing dwelling that will remain occupied, a Builder's Risk Rider is not necessary.

**GOVERNMENT INSURED LOANS** Loan Commitments issued for these types of mortgage loans, including, but not limited to FmHA, RHS, FHA, and VA, are subject to all the terms and conditions of the Agency's commitment, or the VA certificate of reasonable value, as well as the rules, and regulations, and all applicable requirements of the Farmers Home Administration, Rural Housing Service, Department of Housing and Urban Development, the Department of Veterans Affairs, and/or other state or municipal authority.

**FLOOD INSURANCE** Flood insurance is mandatory now or in the future if this property has been or will be determined to be in an area which has a special flood hazard. Federal Law requires that flood insurance, available through any agent, must cover the lowest of: the outstanding principal balance of the loan[s]; the maximum amount of coverage allowed for the type



of building under NFIP or the full replacement cost value of the building or contents securing the loan.

Our policy, in order to best protect collateral interest, is to adhere to the more common industry practice of requiring flood coverage for the lesser of: the full 100% Replacement Cost Value or the maximum amount of insurance available under NFIP for the particular type of building; currently \$\*\*\*\*.\*\* per residential dwelling/condominium unit. A copy of the declaration page or application signed by the agent, along with proof premium has been paid, is required prior to closing.

By signing and accepting this commitment, you acknowledge that if the property securing this loan is in an area identified as having a special flood hazard you agree to these insurance requirements.

**TAX AND INSURANCE PAYMENTS**

Monthly deposits and initial deposits as determined by Lender are required to cover the payment of estimated annual real estate taxes, special assessments and applicable, FHA or Private Mortgage Insurance Premiums. Lender may also require additional deposits for hazard or other insurance if required for this loan. Such deposits shall be placed in a separate escrow or impound account

**SPECIAL ASSESSMENTS**

If required, all unpaid and future special assessment payments must be paid in full prior to, or at time of settlement.

**DOCUMENTATION**

The mortgage or deed of trust, note, and other pertinent loan documents will be provided by Lender and must be signed by all applicable parties. All parties are to be contractually liable under this obligation. Further, the mortgage or deed of trust must be signed by any non-applicant spouses if their signature is required under state law to create a valid lien, pass clear title, or waive liens on the property. Note: Samples of documents are available upon request.

**ADDITIONAL CONDITIONS FOR CONSTRUCTION LOANS**

**CONSTRUCTION LOANS: ONE PAYOUT AND MULTIPLE PAYOUT**

Improvements to be built in a good and workman-like manner in strict accordance with the specifications furnished Lender and in compliance with applicable building codes. Upon completion, said improvements shall be approved by a representative of Lender and an occupancy permit shall be issued by local municipality. Any changes, whether they be additions, deletions, or alterations, of the plans and specifications, must be approved in writing by Lender in order that this loan commitment remain in effect.

**CONSTRUCTION LOANS: MULTIPLE PAYOUT**

Evidence must be submitted that the net proceeds of our loan are sufficient to complete the construction of the building, free and clear of all claims of Mechanic's Liens for labor and material. All disbursements will be made upon the order of the borrower upon presentation of proper waivers of lien, subject to compliance inspections by the Department of Veterans Affairs, the Federal Housing Administration, or Lender, not to exceed 80% of the value of the work done. The remaining funds will be held back until the certificate of completion and/or occupancy certificate is issued.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.

I (WE) accept the terms and Conditions of this Commitment and will notify Lender if there are any changes to information provided on the application before the closing of the loan.

\_\_\_\_\_  
Borrower Date

\_\_\_\_\_  
Borrower Date

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Borrower Date

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Borrower Date

SAMPLE

COMMITMENT ISSUED ON BEHALF OF LENDER BY:

\_\_\_\_\_  
[Representative]

\_\_\_\_\_  
Date



Loan Number:

<b>COMMITMENT CONDITIONS</b>
(Attachment to Mortgage Loan Commitment)

- 1) Borrower: The Closing Disclosure will be provided to you in advance of your closing indicating your loan terms and is followed by a government mandated waiting period before the actual closing occurs. Receipt of the Closing Disclosure does not indicate all loan conditions have been satisfied which must occur prior to closing. Changes of any kind that occur after the final Closing Disclosure has been delivered to you may result in an additional waiting period prior to closing.
- 2) Borrower: Satisfactory documentation of borrower(s) own liquid funds available for the transaction not less than - \$\*\*\*\* \*\*
- 3) Borrower: Satisfactory Homeowners Insurance Binder verifying sufficient coverage, deductible and correct loss payee name/address must be received and approved prior to closing. - Homeowners Insurance must be written by a carrier that has an acceptable rating by \*\*\*\*\*
- 4) Borrower: Commitment subject to compliance with Ability to Repay requirements.
- 5) Borrower: Provide a copy of the most recent paystub, dated within 30 days of the application including all year-to-date earnings, and a W-2 from the prior year to support and verify employment income for - reflecting salary of \$\*\*\*\* \*\*
- 6) Borrower: This loan is also subject to all other lender specific requirements and comply with all applicable federal, state, and local laws and regulations.
- 7) Borrower: Provide complete bank statements covering the last two (2) year period for each checking, savings, or money market account disclosed on your application. Please include explanation and documentation for any large deposits on your application.
- 8) Borrower: Obtain a completed and signed Form 4506-T for each borrower at or before closing. If all of a borrower's income has been reported through a tax return, a completed and signed Form 4506-T is not required. Form 4506, Form 4506T-EZ, or Form 8821 may be used in lieu of Form 4506-T. Refer to the Seller's Selling Guide for additional information. - at closing
- 9) Borrower: At the time of closing, we will require an original insurance policy and/or binder containing fire and extended coverage (i.e., windstorm, hurricane, hail damages, or any other perils that are normally excluded (extended coverage endorsement) insurance in an amount not less than the insurable value of the improvements, or the unpaid principal balance of the mortgage, as long as it equals the minimum amount (80% of the insurable value) required to compensate for damage or loss on a replacement cost basis through the policy to the Lender, and a receipt showing premiums paid in advance for one year. The insurance policy shall also contain a standard mortgage clause in favor of Lender. We cannot require you to obtain a policy which exceeds the guaranteed replacement cost of the improvements securing the loan. This condition supersedes the fire and extended coverage section of the commitment letter.
- 10) Borrower: The credit bureau reflects the borrower(s) have resided at the following additional address(es) in the past 24 months, please provide satisfactory explanation: [ADDRESS]
- 11) Borrower: Provide satisfactory explanation for recent credit inquiries. If inquiries resulted in new credit, provide documentation evidencing the terms of repayment \*\*\*\*\*
- 12) Borrower: Provide satisfactory explanation & evidence of source of large deposit \*\*\*\*\*
- 13) Borrower: Provide satisfactory explanation & evidence of source of large deposit into \*\*\*\*\*
- 14) Borrower: Provide school transcripts with \*\*\*\*\* University to verify dates of schooling for work/school history.
- 15) Borrower: \*\*\*\*\* transaction history that reflects url/website address.
- 16) Lender: Satisfactory review of property Title Insurance commitment is required prior to closing.
- 17) Lender: This loan is approved for a maximum interest rate of - \*.\*\*\*%
- 18) Lender: If the loan does not close by the expiration date of the credit and property documents which includes verification of employment, assets and credit, re-verification will be required. To avoid re-verification the loan must close by: - [DATE] (assets)
- 19) Lender: Closing agent to verify borrower(s) identity
- 20) Lender: Settlement Agent to pay city, county, school taxes due & payable within 60 days of Closing Date & reflect payment on the Closing Disclosure
- 21) Lender: Fully executed and signed Social Security Administration release (form OMB #0960-0760)

- 22) Lender: Mailing Address Notification Form UMAILADD to be completed at settlement by borrowers and returned to lender from settlement agent.
- 23) Lender: An appraisal based on an interior and exterior property inspection reported on Form 1004 is required for this transaction. - \$\*\*\*\* \*\*.
- 24) Lender: Perform and document a verbal verification of employment for each borrower within 10 business days prior to the note date for all borrowers not using self-employment income for qualifying, and within 120 calendar days prior to the note date for all borrowers using self-employment income for qualifying. Direct verification by a third-party employment verification vendor is acceptable if complete within the same timeframes, though the information may not be more than 35 days old (120 days old if self-employed) as of the note date. For borrowers with military income, a military Leave and Earnings Statement (LES) dated within 31 calendar days prior to the note date is acceptable in lieu of a verbal verification of employment. Lenders also have the option of obtaining the verbal verification of employment after the note date (and prior to delivery of the loan to Fannie Mae), but when using this option must ensure compliance with the Selling Guide.
- 25) Lender: Loan was approved based on the following parameters: Debt to Income Ratio not to exceed 39.44%; Total Reserves required for Transaction are \$\*\*\*\*.\*\*. (subject to change) plus closing cost & prepays of \$\*\*\*\*.\*\*. (subject to change) . Required Liquid Funds for transaction can be no less than \$\*\*\*\*.\*\*. If any of these parameters change, as required by product guidelines, the loan will be subject to re- underwriting.
- 26) Lender: If the loan does not close by the expiration date of the following documents, re- verification be required: Income \*\*\*\*\*.
- 27) Lender: No Subordinate Financing Allowed
- 28) Lender: Seller paid closing cost may not exceed actual closing costs to a maximum of \$\*\*\*\*.
- 29) Lender: HUD 1 to evidence that borrower (s) funds required at closing do not exceed \$\*\*\*\*.
- 30) Lender: HUD 1 settlement statement to reflect Earnest Money Deposit in the amount of - \$\*\*\*\*.
- 31) Lender: No cash back at closing, transaction is a purchase.

SAMPLE

▶ SAMPLE LETTER OF OFFER

I/We,  
 (Proposed Purchaser's full name and address)

Phone  
 Number: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

hereby wish to make the following offer to purchase the property known as

\_\_\_\_\_ *(address of the purchase property)*

on the following terms and conditions;

Purchase Price \$

Deposit \$ payable on expiration of cooling off period

Settlement Date \_\_\_/\_\_\_/\_\_\_

Subject to Finance:  Yes  No *(tick one)*

Lender (Bank): Amount to be borrowed: \$

Interest rate not to exceed: \_\_\_% per annum. Term of loan not to exceed \_\_\_ months *(if finance please allow up to 4 weeks from the contract date for unconditional finance)* Other Conditions *(e.g. specific items to be included in sale, building inspection, etc.)*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I understand this is a letter of offer and not a Contract. This offer is valid until midnight the (Day) of \_\_\_\_\_ (Month) (Year) and will lapse if not accepted by the Vendor by this time. Should this be accepted by the Vendor it shall be formalized in a Contract to be prepared by \*\*\*\*\*

Signed : Signed :

(Purchaser) (Purchaser)

Date: Date: \_\_\_\_\_

*"This is not a contract of sale document. Both the Purchaser and Vendor must sign a contract of sale document before this offer becomes legally binding. An offer may be withdrawn at any time before signing a contract of sale document. Contract of sale may also be subject to a 2 day cooling-off period (exercisable by the Purchaser) under section 5 of the Land and Business (Sale and Conveyancing) Act 1994.*



▶ SAMPLE LEAD BASED PAINT DISCLOSURE

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

**Lead Warning Statement**

*Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.*

**Seller's Disclosure**

- 32) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below)
- Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).  
\_\_\_\_\_
  - (ii) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
  - (b) Records and reports available to the seller (check (i) or (ii) below)
    - (i)  Seller has provided the purchaser with all records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (attach documents below).  
\_\_\_\_\_
    - (ii) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgment** (initial)

- (c)  Purchase has received copies of all records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing.
- (d)  Purchaser has received the pamphlet *Lead in Your Home* from the seller.
- (e) Purchaser has (check (i) or (ii) below)
  - (i)  Received a reasonable opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;
  - (ii)  Not received a reasonable opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead based paint hazards.

**Agent's Acknowledgment** (initial)

- (f)  Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Seller	_____ Date	_____ Seller	_____ Date
_____ Purchaser	_____ Date	_____ Purchaser	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

▶ SAMPLE PROPERTY CONDITION DISCLOSURE

New York State  
 Department of State  
 Division of Licensing Services  
 P.O. Box 22001  
 Albany, NY 12201-2001  
 Customer Service: (518) 474-4429  
[www.dos.ny.gov/](http://www.dos.ny.gov/)

**PROPERTY CONDITION DISCLOSURE STATEMENT**

Name of Seller or Sellers:  
 Property Address:

**General Instructions:**

The Property Condition Disclosure Act requires the seller of residential real property to cause this disclosure statement or a copy of thereof to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale.

**Purpose of Statement:**

This is a statement of certain conditions and information concerning the property known to the seller. This Disclosure Statement is not a warranty of any kind by the seller or by any agent representing the seller in the transaction. It is not a substitute for any inspections or tests and the buyer is encouraged to obtain independent professional inspections and environmental tests and also is encouraged to check public records pertaining to the property.

A knowingly false or incomplete statement by the seller or the seller's agent, which is the subject of a claim by the buyer prior to or after the transfer of title. In the event a seller fails to perform the duty prescribed in this article to deliver a Disclosure Statement prior to the signing by the buyer of a binding contract of sale, the buyer shall receive upon the transfer of title a credit of \$500 against the agreed purchase price of the residential real property.

"Residential real property" means real property intended or used as one's family dwelling used or occupied, or intended to be used or occupied, which is occupied or to be occupied by one or more persons, but shall not refer to (a) unimproved real property upon which the only structures are to be construction or (b) condominium units or cooperative apartment units or property owned by a condominium or cooperative association that is not owned in fee simple by the seller.

**Instruction to the Seller:**

- Answer questions to the best of your actual knowledge.
- Use an additional page for your signature if additional space is required.
- Check "NA" if you do not know the answer.
- If you do not know the answer to your property, check "NA" (Non-applicable). If you do not know the answer check "Unknown."

**Seller's Statement:**

The seller makes the following representations to the buyer based upon the seller's actual knowledge at the time of signing this document. The seller authorized his or her agent, if any, to provide a copy of this statement to a prospective buyer of the residential real property. The following are representations made by the seller and are not the representations of the seller's agent.

**GENERAL INFORMATION**

- How long have you owned the property? \_\_\_\_\_
- How long have you occupied the property? \_\_\_\_\_
- What is the age of the structure or structures? \_\_\_\_\_

*Note to buyer – If the structure was built before 1978 you are encouraged to investigate for the presence of lead-based paint.*

- Does anybody other than yourself have a lease, easement or any other right to use or occupy any part of your property other than those stated in documents available in the public record, such as rights to use a road or path or cut trees or crops?  
 \_\_\_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

5. Does anybody else claim to own any part of your property? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
6. Has anyone denied you access to the property or made a formal legal claim challenging your title to the property? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
7. Are there any features of the property shared in common with adjoining landowners or a home-owner's association, such as walls, fences or driveways? If yes, describe below \_\_\_\_\_  
 Yes  No  Unknown  NA
8. Are there any electric or gas utility surcharges for line extensions, special assessments or home-owner or other association fees that apply to the property? If yes, describe below \_\_\_\_\_  
 Yes  No  Unknown  NA
9. Are there certificates of occupancy related to the property? If no, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA

**ENVIRONMENTAL**

**Note to Seller:**

In this section, you will be asked questions regarding petroleum products and hazardous or toxic substances that you know to have been spilled, leaked or otherwise been released on the property or from the property or any other property. Petroleum products may include, but are not limited to, gasoline, diesel fuel, home heating oil, and lubricants. Hazardous or toxic substances are products that could pose short-term danger to human health or the environment if they are not properly disposed of, applied or stored. They include, but are not limited to, fertilizers, pesticides and insecticides, paint including paint thinners, sealants and wood preservatives, treated wood, construction materials such as asphalt and roofing materials, and household products, batteries, cleaning solvents including septic tank cleaners, household chemicals and products containing mercury and lead.

**Note to Buyer:**

If contamination of this property from petroleum products and/or hazardous or toxic substances is a concern to you, you are urged to consider soil and groundwater testing of the property.

10. Is any or all of the property located in a designated flood zone? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
11. Is any or all of the property located in a designated flood zone? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
12. Is the property located in an agricultural district? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
13. Was the property ever a site of a landfill? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
14. Are there or have there ever been fuel storage tanks above or below the ground on the property?  
 Yes  No  Unknown  NA
- If yes, are they currently in use?  Yes  No  Unknown  NA
  - Location(s) \_\_\_\_\_
  - Are they leaking or have they ever leaked? If yes, explain below \_\_\_\_\_  
 Yes  No  Unknown  NA
15. Is there asbestos in the structure? If yes, state location or locations below \_\_\_\_\_  
 Yes  No  Unknown  NA
16. Is lead plumbing present? If yes, state location or locations below \_\_\_\_\_  
 Yes  No  Unknown  NA
17. Has a radon test been done? If yes, attach a copy of the report \_\_\_\_\_  
 Yes  No  Unknown  NA



18. Has motor fuel, motor oil, home heating fuel, lubricating oil or any other petroleum product, methane gas, or any hazardous or toxic substance spilled, leaked or otherwise been released on the property or from the property onto any other property? If yes, describe below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

19. Has the property been tested for the presence of motor fuel, motor oil, home heating fuel, lubricating oil, or any other petroleum product, methane gas, or any hazardous or toxic substance? If yes, attach report(s) ..... \* Yes \* No \* Unknown \* NA STRUCTURAL

20. Is there any rot or water damage to the structure or structures? If yes, explain below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

21. Is there any fire or smoke damage to the structure or structures? If yes, explain below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

22. Is there any termite, insect, rodent or pest infestation or damage? If yes, explain below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

23. Has the property been tested for termite, insect, rodent or pest infestation or damage?  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA  
 NA If yes, please attached report(s)

24. What is the type of roof/roof covering (slate, asphalt, other)? \_\_\_\_\_  
 • Any known material defects? \_\_\_\_\_  
 • How old is the roof? \_\_\_\_\_  
 • Is there a transferable warrantee on the roof in effect no \_\_\_\_\_ exp \_\_\_\_\_ w \_\_\_\_\_

25. Are there any known material defects in any of the following structural systems: footings, beams, girders, lintels, columns or partitions? \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

**MECHANICAL SYSTEMS AND SEWERAGE**

26. What is the water source? (Check all that apply) \_\_\_\_\_ Well \_\_\_ Private \_\_\_ Municipal \_\_\_ Other: \_\_\_\_\_  
 • If municipal, is it metered? \_\_\_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

27. Has the water and/or fire been tested? \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

28. What is the type of sewer system? (Check all that apply) \_\_\_\_\_ Public Sewer \_\_\_ Private Sewer \_\_\_ Septic \_\_\_ Cesspool  
 • If septic or cesspool, age \_\_\_\_\_  
 • Date last pumped \_\_\_\_\_  
 • Frequency of pumping? \_\_\_\_\_  
 • Any known material defects? If yes, explain below \_\_\_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

29. Who is your electric service provider? \_\_\_\_\_  
 • What is the amperage? \_\_\_\_\_  
 • Does it have circuit breakers or fuses? \_\_\_\_\_  
 • Private or public poles? \_\_\_\_\_  
 • Any known material defects? If yes, explain below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

30. Are there any flooding, drainage or grading problems that resulted in standing water on any portion of the property? If yes, state locations and explain below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

31. Does the basement have seepage that results in standing water? If yes, explain below \_\_\_\_\_  
 \_\_\_ Yes \_\_\_ No \_\_\_ Unknown \_\_\_ NA

Are there any known material defects in any of the following? If yes, explain below. Use additional Sheets if necessary

- 32. Plumbing system?  Yes  No  Unknown  NA
- 33. Security system?  Yes  No  Unknown  NA
- 34. Carbon monoxide detector?  Yes  No  Unknown  NA
- 35. Smoke detector?  Yes  No  Unknown  NA
- 36. Fire sprinkler system?  Yes  No  Unknown  NA
- 37. Sump pump?  Yes  No  Unknown  NA
- 38. Foundation/slab?  Yes  No  Unknown  NA
- 39. Interior walls/ceilings?  Yes  No  Unknown  NA
- 40. Exterior walls or siding?  Yes  No  Unknown  NA
- 41. Floors?  Yes  No  Unknown  NA
- 42. Chimney/fireplace or stove?  Yes  No  Unknown  NA
- 43. Patio/deck?  Yes  No  Unknown  NA
- 44. Driveway?  Yes  No  Unknown  NA
- 45. Air conditioner?  Yes  No  Unknown  NA
- 46. Heating system?  Yes  No  Unknown  NA
- 47. Hot water heater?  Yes  No  Unknown  NA

48. The property is located in the \_\_\_\_\_ (provide the address and zip code). Buyer is encouraged to check public records concerning the property (e.g. tax records and well and septic maps). The seller should use this area to further explain any item above. If necessary, attach additional pages and indicate the number of additional pages attached

**SELLER'S CERTIFICATION:**

Seller certifies that the information on this Property Condition Disclosure Statement is true and complete to the seller's actual knowledge as of the date of the sale by the seller. If a seller of residential real property acquires knowledge which renders materially inaccurate the Property Condition Disclosure Statement provided previously, the seller shall deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. In no event, however, shall a seller be required to provide a revised Property Condition Disclosure Statement after the transfer of title from the seller to the buyer or occupancy by the buyer, whichever is earlier.

Seller's Signature X \_\_\_\_\_  
 Seller's Signature X \_\_\_\_\_

Date \_\_\_\_\_  
 Date \_\_\_\_\_

**BUYER'S ACKNOWLEDGMENT:**

Buyer acknowledges receipt of a copy of this statement and buyer understands that this information is a statement of certain conditions and information concerning the property known to the seller. It is not a warranty of any kind by the seller or seller's agent and is not a substitute for any home, pest, radon or other inspections or testing of the property or inspection of the public records.

Buyer's Signature X \_\_\_\_\_  
 Buyer's Signature X \_\_\_\_\_

Date \_\_\_\_\_  
 Date \_\_\_\_\_

➤ SAMPLE RESIDENTIAL CONTRACT OF SALE

Residential Contract of Sale 11-2000

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association

**WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").**

**CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT**

**NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION**

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

**Residential Contract of Sale**

**Contract of Sale** made as of

**BETWEEN**

Address:

Social Security Number/Fed. I.D. No.(s):

hereinafter called "Seller" and

Address:

Social Security Number/Fed. I.D. No.(s):

hereinafter called "Purchaser"

**1. Premises.** Seller shall sell and convey and Purchaser shall purchase from this sale are furniture and household furnishings and the property, together with all buildings and improvements (collectively the "Premises"), more fully described in paragraph 3(a) of this contract and attached hereto and made a part hereof, marked "Schedule A", annexed hereto and made a part hereof, to be known as:

Street Address:

Tax Map Designation:

Together with Seller's ownership and interests in the bed of any street, alley, driveway, open space, or other area adjoining the Premises to the Premises, together with any right of Seller to any unpaid award or judgment for damage to the Premises or for any damage to the Premises of any street or highway. Seller shall deliver to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

**2. Personal Property.** This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, chandeliers, bathroom and kitchen cabinets and counters, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flagpole, pumps, shrubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in-microwave oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below (*strike out inapplicable items*).

**3. Purchase Price.** The purchase price is \$ payable as follows:

- (a) On the signing of this contract, by Purchaser's good check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"): \$
- (d) By allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed: \$
- (e) By a purchase money note and mortgage from Purchaser to Seller: \$
- (f) Balance at Closing in accordance with paragraph 7: \$

**4. Existing Mortgage.** (*Delete if inapplicable*) If this sale is subject to an existing mortgage as indicated in paragraph 3(b) above:

- (e) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of percent per annum, in monthly installments of \$ which include principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on
- (f) To the extent that any required payments are made on the existing mortgage between the date hereof and Closing which reduce the unpaid principal amount thereof below the amount shown in paragraph 3(b), then the balance of the price payable at Closing under paragraph 3(d) shall be increased by the amount of the



payments of principal. Seller represents and warrants that the amount shown in paragraph 3(b) is substantially correct and agrees that only payments required by the existing mortgage will be made between the date hereof and Closing.

33) If there is a mortgagee escrow account, Seller shall assign it to Purchaser, if it can be assigned, and in that case Purchaser shall pay the amount in the escrow account to Seller at Closing.

34) Seller shall deliver to Purchaser at Closing a certificate dated not more than 30 days before Closing signed by the holder of the existing mortgage, in form for recording, certifying the amount of the unpaid principal, the date to which interest has been paid and the amounts, if any, claimed to be unpaid for principal and interest, itemizing the same. Seller shall pay the fees for recording such certificate. If the holder of the existing mortgage is a bank or other institution as defined in Section 274-a of the Real Property Law it may, instead of the certificate, furnish a letter signed by a duly authorized officer, employee or agent, dated not more than 30 days before Closing, containing the same information.

35) Seller represents and warrants that (i) Seller has delivered to Purchaser true and complete copies of the existing mortgage, the note secured thereby and any extensions and modifications thereof, (ii) the existing mortgage is not now, and at the time of Closing will not be, in default, and (iii) the existing mortgage does not contain any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the sale or conveyance of the Premises.

**5. Purchase Money Mortgage.** *(Delete if inapplicable)* If there is to be a purchase money mortgage as in paragraph 3(c) above:

(g) The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached hereto, or, if not, in a form adopted by the New York State Bar Association. Purchaser shall pay at Closing the mortgage recording fees, including fees and the attorney's fees, in the amount of \$\_\_\_\_\_.

(h) The purchase money mortgage shall also provide that it is subject and subordinate to the lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, and that (i) the interest rate thereof shall not be greater than \_\_\_\_\_

percent per annum and the total debt service thereunder shall not be greater than \$\_\_\_\_\_ per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess is to be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefore, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.

**6. Downpayment in Escrow.**

(a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at address \_\_\_\_\_

until Closing or sooner termination of this contract shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in a(n) \_\_\_\_\_ interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification Numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur, Escrowee shall give Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment. Escrowee shall give Notice to the other party of such demand. If Escrowee does not receive Notice of such demand from such other party to the proposed payment in full within \_\_\_\_\_ days after the giving of such Notice, Escrowee is authorized and directed to make such payment in full. If Escrowee does receive such Notice of such demand within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(g) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(h) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

(i) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions

of this paragraph by signing in the place indicated on the signature page of this contract.

(j) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.

36) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior notice (by telephone or otherwise) to Purchaser.

37) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$ ; and

38) As otherwise agreed to in writing by Seller or Seller's attorney.

**8. Mortgage Commitment Contingency.** *(Delete paragraph if inapplicable. For explanation, see: NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE.)*

(i) The obligation of Purchaser to purchase under this contract is conditioned upon issuance, on or before days after executed copy of this contract is given to Purchaser or Purchaser's attorney in the manner set forth in paragraph 25 of this contract, of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan to Purchaser for a VA, or other governmentally insured loan, to Purchaser for the purchase price and expense, of \$ for a term of at least years (or shorter term as Purchaser may be willing to accept at the prevailing fixed or adjustable rate) and subject to all other customary commitment terms and conditions. To the extent a Commitment is conditioned on the sale of Purchaser's current home, payment of existing debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met; however, a commitment conditioned on the Institutional Lender's approval of an appraisal shall not be deemed a "Commitment" hereunder until an appraisal is approved (and if that does not occur before the Commitment Date Purchaser may cancel under subparagraph 8(e) unless the Commitment Date is extended). Purchaser's obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the lender fails or refuses to fund the loan for any reason.

(j) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such

(k) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

**7. Acceptable Funds.** All money payable under this contract unless otherwise specified, shall be paid by:

(a) Cash, but not over \$1,000.00

application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth in subparagraph 8(a) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt hereof.

(k) *(Delete this subparagraph if inapplicable)* Prompt submission by Purchaser of an application to a mortgage broker registered pursuant to Article 17 of the New York Banking Law ("Mortgage Broker") shall constitute compliance with the terms and conditions set forth in subparagraph 8(k) provided that such Mortgage Broker promptly submits an application to such Institutional Lender(s) and Purchaser shall cooperate in good faith with such Mortgage Broker to obtain a Commitment from such Institutional Lender(s).

If all Institutional Lenders to whom applications were made deny such applications in writing prior to the Commitment Date, Purchaser may cancel this contract by giving Notice thereof to Seller, with a copy of such denials, provided that Purchaser has complied with all its obligations under this paragraph 8.

(m) If no Commitment is issued by an Institutional Lender on or before the Commitment Date, then, unless Purchaser has accepted a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), Purchaser may cancel this contract by giving Notice to Seller within 5 business days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.

(n) If this contract is canceled by Purchaser pursuant to subparagraphs 8(d) or (e), neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27.

(o) If Purchaser fails to give timely Notice of cancellation or if Purchaser accepts a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph 8.

(p) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may cancel this contract by giving Notice to Purchaser within 5 business days after the Commitment Date, which cancellation shall become effective unless Purchaser delivers a copy of such commitment to Seller within 10 business days after the Commitment



Date. After such cancellation neither party shall have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except as set forth in paragraph 27.

(q) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any other state, foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.

(r) For purposes of subparagraph 8(a), Purchaser shall be deemed to have been given a fully executed copy of this contract on

**10. Governmental Violations and Orders.**

- 39) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with all authorizations necessary to make the searches that could affect these matters.
- 40) *(Delete if inapplicable)* All obligations affecting the Premises pursuant to the Administrative Code of the City of New York in effect as of the Closing and payable in money shall be discharged by Seller prior to Closing.

**11. Seller's Representations.**

- (l) Seller represents and warrants to Purchaser that:
- (i) The Premises abut a public road;
- (ii) Seller is the sole owner and has the full right, power and authority to convey the same in accordance with the terms of this contract;
- (iii) Seller is not a "foreign investor" as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
- (iv) The Premises are not affected by any exemptions or abatements of taxes; and
- (v) Seller has been known by no other name for the past ten years, except:
- (m) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.
- (n) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

(s) **Condition of Property.** Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition

the third business day following the date of ordinary or regular mailing, postage prepaid.

**9. Permitted Exceptions.** The Premises are sold and shall be conveyed subject to:

- (iii) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
- (iv) Consents for the erection of any structures on, under or above any streets on which the Premises abut;
- (v) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
- (vi) Real estate taxes that are a lien, but are not yet due and payable; and
- (vii) The other matters, if any, requiring a survey exception, set forth in a Rider attached.

and state of repair of the Premises. All property included in this sale, including the Premises, shall be sold "as is" and investigation thereof and the Buyer is entering into this contract based solely upon the Buyer's own inspection and investigation and not upon any representations, written or oral, as to the condition of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall be sold "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing, except as otherwise set forth in paragraph 16(e), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

(t) **Insurable Title.** Seller shall give and Purchaser shall accept such title as shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for this contract.

**14. Closing, Deed and Title.**

"Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The



deed in such case shall contain a recital sufficient to establish compliance with that Section.

**15. Closing Date and Place.** Closing shall take place at the office of \_\_\_\_\_ at o'clock on or upon reasonable notice (by telephone or otherwise) by Purchaser, at the office of \_\_\_\_\_

**16. Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

- (a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.
- (b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a family dwelling at the date of Closing.
- (c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then

**41) Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and recording tax payable by reason of the delivery or recording of deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and recording taxes together with any required tax returns duly executed and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and interest or penalties thereon shall survive Closing.

**42) Apportionment and Other Charges.** \_\_\_\_\_, including but not limited to water meter and installment assessments, shall be apportioned as of midnight of the \_\_\_\_\_ of Closing:

- (o) To the extent \_\_\_\_\_, including but not limited to water meter and installment assessments, shall be apportioned as of midnight of the \_\_\_\_\_ of Closing:
  - (i) \_\_\_\_\_ taxes, water charges and sewer rents, on the basis of the fiscal period for which \_\_\_\_\_;
  - (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and renewals of those expiring prior to Closing; (v) vault charges; (vi) rents as and when collected.
- (p) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.
- (q) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.
- (r) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

required by FIRPTA or a withholding certificate from I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

- (d) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.
- (e) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment, and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.
- (f) If the Premises are a one or two family home, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that \_\_\_\_\_ is installed in the Premises a smoke detecting alarm device \_\_\_\_\_.
- (g) The delivery by the parties of \_\_\_\_\_ affidavits required as a condition of recording the deed.

- (s) Any errors or omissions in computing apportionments or other adjustments of Closing shall be corrected within a reasonable time after Closing. This paragraph shall survive Closing.

**Allowance for Unpaid Taxes, etc.** Seller has the option to credit to Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not more than five business dates after Closing, provided the official bills herefor computed to said date are produced at Closing.

**(v) Use of Purchase Price to Remove Encumbrances.** If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

**21. Title Examination; Seller's Inability to Convey; Limitations of Liability.**

Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser.

Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

- (xi) (i) If at the date of Closing, Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) If Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other party within 10 days after such adjournment date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller

impossible to ascertain and the Deed shall be void and Seller shall be liable for the full and reasonable amount of damages sustained by Purchaser, including reasonable attorney's fees and is not a penalty.

- (b) If Seller defaults under this contract, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including but not limited to:

43) **Purchaser's Lien.** All monies paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

44) **Notices.** Any notice or other communication ("Notice") shall be in writing and either:

- (t) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or
- (u) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant in this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any Notice to Escrowee shall be deemed given

after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

- (xii) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

17. **Affidavit as to Judgment, Liens, Easements, Etc.** If a title examination discloses judgment liens, mortgages, liens, or other returns against persons or entities other than the Seller, Seller shall deliver an affidavit at Closing stating that they are not against the Seller.

- (a) In the event of a default by Seller, Seller's sole remedy shall be to retain the Downpayment as liquidated damages, it shall be agreed that Seller's damages in case of Purchaser's default shall be

only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or with respect to paragraph 7(b) or paragraph 20, sent by fax to the party's attorney. Each Notice by fax shall be deemed given when transmission is confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries. This contract may be delivered as provided above or by ordinary mail.

(w) **No Assignment.** This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

(x) **Broker.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker in connection with this sale other than ("Broker") and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorney's fees arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur the termination of this contract.

## 28. Miscellaneous.

- (xiii) All prior understanding, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.
- (xiv) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.
- (xv) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.
- (xvi) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this or any provisions hereof.
- (xvii) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.
- (xviii) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.
- (xix) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.
- (xx) This contract is intended for the exclusive benefit of the parties hereto and except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by any other person or entity.
- (xxi) If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is attached hereto and made a part hereof.

Continued on Rider attached hereto (delete if inapplicable)

SAMPLE



*In Witness Whereof*, this contract has been duly executed by the parties hereto.

\_\_\_\_\_ *Seller* \_\_\_\_\_ *Purchaser*

\_\_\_\_\_ *Seller* \_\_\_\_\_ *Purchaser*  
**Attorney for Seller:** **Attorney for Purchaser:**  
 Address: Address:  
 Tel.: Fax: Tel.: Fax:

Receipt of the Downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.

\_\_\_\_\_ *Escrowee*

**Contract of Sale**

TITLE NO. \_\_\_\_\_

TO

Sheet \_\_\_\_\_  
 Section \_\_\_\_\_  
 PL \_\_\_\_\_  
 City or Town \_\_\_\_\_  
 Street Number \_\_\_\_\_

**NOTES ON MORTGAGE CONTINGENCY CLAUSE**

**RESIDENTIAL CONTRACT OF SALE**

- 45) **WARNING:** The mortgage Commitment contingency clause in this Contract of Sale is a bar association form that attempts to waive the rights and obligations of the mortgage lender and Purchaser. It should be reviewed carefully and Purchaser should take appropriate steps to ensure that all the provisions are appropriate for that transaction. Negotiated modifications are necessary.
- 46) Under the clause, Seller is required to issue a Commitment letter from an Institutional Lender within the number of days specified in the amount specified. This refers to calendar days. Seller's attorney should calculate the Commitment Date in the letter delivering the executed Commitment letter to Purchaser's attorney, to prevent confusion later. Purchaser should promptly review and accept or correct that date. In applying for a loan, Purchaser should inform its lender of the scheduled date of Closing in the contract and request that the expiration date of the Commitment occur after the scheduled date of Closing. Purchaser must comply with deadlines and pursue the application in good faith. The Commitment contingency is satisfied by issuance of a Commitment in the amount specified on or before the Commitment Date, unless the Commitment is conditioned on approval of an appraisal. If the Commitment is conditioned on approval of an appraisal and such approval does not occur prior to the Commitment Date, Purchaser should either cancel the contract or obtain an extension of the Commitment Date. If the Commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the contract of sale with Seller.
- 47) If there are loan terms and conditions that are required or would not be acceptable to Purchaser, such as the interest rate, term of the loan, points, fees or a condition requiring sale of the current home, those terms and conditions should be specified in a rider.
- 48) This clause assumes that initial review and approval of Purchaser's credit will occur before the Commitment letter is issued. Purchaser should confirm with the lender that this is the case before applying for the Commitment.
- (W) If, as has been common, the Commitment letter itself is conditioned on sale of Purchaser's home or payment of any outstanding debt or no material adverse change in Purchaser's financial condition, such a Commitment will satisfy the contract contingency nonetheless, and Purchaser will take the risk of fulfilling those Commitment conditions, including forfeiture of the Downpayment if Purchaser defaults on its obligation to close. Under New York case law, a defaulting Purchaser may not recover any part of the Downpayment, and Seller does not have to prove any damages. If Purchaser is not willing to take that risk, the clause must be modified accordingly.
- (X) Purchaser may submit an application to registered Mortgage Broker instead of applying directly to an Institutional Lender.
- (Y) This clause allows Seller to cancel if a Commitment is not accepted by Purchaser by the Commitment Date, unless Purchaser timely supplies a copy of the Commitment, to allow Seller the option to avoid having to wait until the scheduled date of Closing to see if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and settle for forfeiture of the Downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This clause means that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that he/she will obtain the Commitment after the Commitment Date. Some Purchasers may not want to be subject to such cancellation by Seller.
- (Z) Purchaser may want to add to paragraph 21(c) that Purchaser's reimbursement should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller willfully defaults under the contract of sale (alternative: If Seller is unable to transfer title under the contract of sale).

9-25-00  
 Joint Committee on the Mortgage Contingency Clause:  
 Real Property Section of the New York State Bar Association  
 Real Property Law Committee of the Association of the Bar of the City of New York  
 Real Property Committee of the New York County Lawyers Association











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