



A lawyer discusses due diligence on real estate closings in the COVID era - by C. Jaye Berger

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There is still a robust market for buying and selling co-ops, condominiums and townhouses even in the current period. However, doing due diligence to find out more about the overall property and the unit in particular is a little bit more challenging, but is still possible.

When I was listening to the television, like everyone else, to the reports about the building collapse in Florida, I kept wondering to what extent due diligence was done there on any of the recent sales. That isn't to say that one of the attorneys would have noticed that the building was in such bad condition, but when they said that there had been estimates from contractors for future repair work to be done, I wondered how lawyers for would-be purchasers would have known about that, if at all. That type of communication which would probably have been sent to the managing agent and be in that office. It would not have been placed in the building minutes. I do not ever recall seeing such things in a board of directors minute book unless the board was voting to approve going forward with a proposed renovation. Generally when someone buys a particular unit, an inspection is done of that unit by the potential purchaser and not of the whole building. Licensed professionals know where to look for evidence of problems. However, not everyone wants to pay for their services. They just take their chances.

On a recent condo closing, I asked the sellers attorney if there had been any renovations in the unit. I was given what I would describe as "a very vague answer." I was told some work was apparently done, but it did not rise to the level of an "alteration" or require a permit. But who is making that representation ? Usually it is a lawyer. I prepared a rider to the proposed contract asking for a representation that any work that had been done was done in accordance with the building rules and regulations and building department regulations.

Let's think about what that may really mean. I have heard that property managers in some buildings ask the building super if the work needs to be done and whether it should be filed with the building department. If he waves his hands to say, "It is not necessary," then they may not do that. That eliminates a whole level of inspection by the department of buildings.

Filing an application for a permit, puts you on the "radar screen" so to speak. That work has to be inspected and approved in order to close out the permit application. If you never put the work on the radar screen, no one may notice that it hasn't been inspected. The architect may self certify the work

rather than having an inspection. We received my rider back with a hand written note in the margin saying that they had “previously disclosed a leak in the kitchen.” We had not received such a disclosure. What I also found so interesting, and scary, was that the story grew bigger and bigger.

When we contacted the managing agent to ask about this, we were told that there had been two episodes of leaks. In one, an elderly person left dishes in the sink with the water running and went to sleep, which resulted in a flood. In another leak, the dishwasher was not properly connected and water flooded the floor. This was in the apartment above the apartment my client was trying to purchase. There was apparently so much water, that the kitchen cabinets and floor needed to be replaced. We never got a really clear answer, but heard enough for my client to weigh in on the importance of it for his decision to purchase. Due diligence should not be skipped.

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