



Change to East Hampton's code regarding certificates of occupancy

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Christopher Kelley

Riverhead, NY Changes to the Town of East Hampton's town code regarding certificates of occupancy (CO) went into effect on January 1, 2024. The updated town code requires that an updated CO be obtained before the property is transferred to the seller.

While that may seem easy enough, there are still questions as to who is responsible for obtaining the CO, how long will it take to get one and when should the CO be produced during the real estate transaction. Christopher Kelley, senior partner, Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP, says all these issues need to be resolved before the transaction can take place.

"Even prior to the enactment of the various code provisions requiring an updated CO upon transfer, most South Fork law practitioners made it a habit of requesting, as a purchaser's attorney, that the seller provide at, or prior to, closing an updated CO as part of the contract," Kelley said. "The typical contract provision that requires an updated CO simultaneously requires the purchaser to provide and pay for an updated survey with which to obtain the updated CO."

Kelley said, although the revised town code does not spell out who is responsible for the costs in updating the CO, the language suggests that responsibility falls on the seller. "This risk can be transferred to the seller by means of a contract provision that requires the seller to provide an updated CO at or prior to closing," he said.

The form contract that is most widely used on eastern Long Island is a provision in the town code that requires the seller to provide a "valid and subsisting" CO covering all structures on the property. "This more often than not is modified by a rider paragraph either inserted by the seller or requested by the purchaser that requires the seller to produce an updated CO," said Kelley.

He said this is a "best practice" for buyers' attorneys since it's considered rare for the seller to modify the property by building accessory units on the property, adding to the main residence or excessive clearing — all of which violate the CO. Other issues in obtaining a CO include finished basements, too many bedrooms inside the house and problems with the pool fence and alarm.

There are other problems in obtaining the CO, Kelley said. Between municipal staffing issues, scheduling an inspection and determining whether the structure passes inspection, and filling out paperwork, it can take four to six weeks to obtain the certificate. "The best practice for the seller to avoid this delay is to get an updated CO prior to listing the property."

Kelley previously served on the East Hampton Town Zoning Board of Appeals.

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