



## **Purchasing new units in condominiums and issues to be aware of before you sign the contract**

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The real estate market is starting to show some signs of "life." People, especially those with cash on hand, are looking for "bargains" in the real estate market. This has led some people to take a second look at units in some of the new co-op and condominium developments. Some developers are struggling, to put it mildly, and are more "open," shall we say, to reasonable offers. While some clients are coming to me to discuss purchasing in these new developments, people need to understand that these closings are different from what people think of when they have a traditional closing.

In a typical closing, the parties negotiate the terms of the Contract of Sale and mutually agree on a variety of issues, including when the closing will occur. With a closing on a new development, the terms of the contract are fixed in the offering plan or declaration and the only negotiations are over closing expenses and possibly punchlist items with the construction.

Closing expenses on a condominium or a condop can be substantial, with the sponsor trying to pass along as many expenses to the purchaser as possible. The current economy has softened the edges of some developers in this regard and it is more "negotiable." The reserve fund is created when each party who closes deposits two months of common charges. Most sponsors do not contribute to the reserve fund. If there are many closings, this can add up. However, if only the minimum number of units are closing, there may still be many rental apartments. That can create a large financial burden on the few units which have closed, especially if the market is slow and there may not be many more closings for a while. If it turns out that there are any problems with the property, the small number of unit owners may have to fund repairs and other expenses.

Developers have many closing costs which are passed along to purchasers. Not only do purchasers pay the sponsor's transfer taxes, but they are at higher rates. They may also pass along their title expenses and other expenses. While these expenses will be discussed to some extent before the purchaser shakes hands on the deal, the details only really come out when the purchaser's attorney does her due diligence and reviews the declaration and amendments and the proposed contract of sale.

Scheduling the closing can also be tricky. The purchaser may be kind of in the dark about what time frame to expect. The sponsor may have a variety of delays before he sends out notice of the closing date. When he does, the date in the sponsor's notice is the date. If things are moving along on the deal, this date may not come as a surprise, but if there have been long delays and problems with getting a temporary certificate of occupancy, the notice of the closing may come as a surprise to the purchaser and not be convenient. There may not be an opportunity to adjourn.

As with any newly renovated or constructed property, there will be items that need to be completed or fixed. If they are minor things here and there, they are on a punchlist. On one new construction

deal, I suggested making the punchlist an attachment to the contract of sale and was surprised to hear the sponsor's attorney say, "We never do that. We wait until after the closing." As an attorney who handles construction disputes, that is not a good idea. After you close on the unit, you do not want to sit and wait for the sponsor to get around to fixing whatever is on your list. I have gotten calls from people who bought in new developments asking for legal advice because they closed on deals eight months ago and certain things were still not repaired by the sponsor. Remember, the maximum leverage for a purchaser is before they go into contract.

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