

## Impossible situations solved professionally

**HOW OUR IN-HOUSE COUNSEL, SUSAN HART SAVED PRUDENTIAL DOUGLAS ELLIMAN DEALS AT THE CLOSING TABLE** *by Susan Hart, Esq Counsel/Clearance*

In today's market, there is a growing need for enhanced title insurance support due to complexities of the transactions. In house counsel is a VITAL position in the title insurance company. Many times we have been behind the proverbial "EIGHT BALL" and could have lost deals... but my 20 year involvement in the Real Estate Industry, extensive experience and knowledge (and of course commitment) were instrumental in getting these deals done, closed and everyone paid!

A few examples of this are: We had a multimillion dollar deal that was referred to us by an agent from the 575 Madison Avenue office. AT THE CLOSING TABLE our title continuation turned out a brand new filing of a 2 Million Dollar Mechanic's Lien! How can we close?? This has to be cleared and omitted! There was no way we could do this at the closing, we would have to adjourn and re-close at a later date. This, of course was not acceptable to anyone involved. So, I did some research and uncovered the fact that this Mechanic's Lien was **ERRONEOUSLY FILED** against our unit! After many hours of research and phone calls, we finally closed the deal.

On another transaction, an unexpected judgment appeared on record against the seller, again at the last

minute. The seller claimed that this judgment was in fact satisfied already. I allowed the closing to take place so that the buyer would not lose their mortgage rate and we held all the documents in escrow until the seller could produce the satisfaction from the judgment creditor. Usually, this would cause an adjournment as well, but we have such a good relationship with the attorneys that I trusted they would produce what we needed in order to have the transaction come to fruition.

Another example that we run into quite frequently is; there was an **OPEN MORTGAGE** of record on the subject property. The seller claimed that this mortgage was paid off years ago. I researched the mortgage history and found the current bank who had taken over the original bank which was now out of business. I was able to get them to produce a duplicate original **SATISFACTION OF MORTGAGE** and ultimately clear the title for closing.

I pride myself on being responsive, available and provide prompt and courteous service to our clients and agents. I am always available to discuss any issues or concerns you may have on a particular file, or just questions in general. You can count on our commitment and support as well as rely on the services we provide at PDE Title. ~

## WHEN IT COMES TO RESIDENTIAL CLOSINGS THE BROKERS HAVE A LOT TO GAIN

*by Lior Aldad, Esq*

Many times, at the closing table, tempers run high and turmoil rules when there is a disagreement on the commission earned on a sale of a trophy residential property, particularly where the disputed commission could reach seven figures.

The New York State Association of Realtors has provided the residential brokerage community with some means of protection when Sellers do not pay agreed upon commissions under listing agreements. Under the new law, called the Commission Escrow Act (the "Act"), that amount of commission due would not be delivered to the Seller, but rather would be held by the County Clerk until the claim is resolved. This law is also applicable to the sale of Cooperative units.

There are strict time limits by which the broker must notify the Seller of his or her claims, the failure to timely serve such Notice and/or bring an action can cause the broker to forfeit their rights. Additionally, now brokers can essentially secure the funds in governmental hands (where previously those funds will have gone directly to the Seller).

Under the Act, the County Clerk must note on the affidavit of entitlement that it does not constitute a lien against the property and it does not invalidate any transfer or lease of the property. Although it is not a lien, it is recorded in a "lien docket" format so that Judgment and Lien searches by title companies, Purchasers and Lenders will uncover the affidavit of entitlement.

Finally, if the Act is utilized by the parties, the broker must initiate an action to recover the commission within sixty (60) days of the deposit of the funds by the Seller. Absence to timely commence such an action by the broker permits the owner to request the return of the funds from the County Clerk. Furthermore, notwithstanding the foregoing, if for any reason the broker fails to commence a legal action within six (6) months of the time of the deposit by the owner, the broker loses the broker's claim for the commission. In other words, the statute of limitations (being six (6) years in New York State for breach of Contract) is automatically shortened to a period of six (6) months in the event that the Commission Escrow Act is utilized.

### Manhattan Real Estate Attorneys

LIOR ALDAD, ESQ.  
212.268.6999  
Lioraldad@aol.com

LAWRENCE CHAIFETZ, ESQ.  
212.594.9410  
Lchaifetz@chaifetzlaw.com

SCOTT CLAMAN, ESQ.  
212.573.6703  
SClaman1@aol.com

BRUCE COHEN, ESQ.  
212.684.1919  
Bruce@cohenandfrankel.com

STEVEN EBERT, ESQ.  
212.290.4000  
Steven.ebert@ejlaw.net

JERRY FEENEY, ESQ.  
212.842.0237  
Jerry@Jerryfeeny.com

BRUCE FRIEDBERG, ESQ.  
212.829.9090  
Friedberg@fccplaw.com

ANDREW GRABINER, ESQ.  
212.344.0200  
agrabiner@grabinerlaw.com

PETER HERB, ESQ.  
212.964.7133  
herblaw@gmail.com

BRUCE KATZ, ESQ.  
STEVEN MATZ, ESQ.  
212.244.4630  
bruce@katzmatz.net  
steven@katzmatz.net

CRAIG PRICE, ESQ.  
212.867.4466 x319  
cprice@bbwg.com

KEITH A. SCHUMAN, ESQ.  
212.490.0100  
keith@schumanlawfirm.com

MATTHEW SCHWARZ, ESQ.  
914.644.8300  
mschwarz@sbg-law.com

SCOTT SIEGLER, ESQ.  
212.683.5372  
Sieglerscott@gmail.com

ALEX SUSLENSKY, ESQ.  
212.929.7333  
alex@suslaw.com

BRIAN TRACZ, ESQ.  
212.366.4144  
btracz@briantracz.com

BARRY WEIDENBAUM, ESQ.  
212.832.7400  
Bjw@whfirm.com

# Attorney tips for brokers

## TIP NUMBER 1

by Alex Suslensky, Esq.

Almost all brokers know that a deal with either have or not have a financing contingency. However, many brokers don't realize that there are actually 3 options when it comes to the loan financing provision. The latest version, the Co-Op contract spells out these options and allows the attorneys to choose one of them. Although the standard condo and house contract forms do not contain a similar provision an experienced attorney could add it into a rider.

The options are as follows: #1 Contract contingent upon purchaser obtaining a loan financing commitment; #2-contract NOT contingent upon purchaser obtaining a loan financing commitment, but purchaser may use loan financing to complete the transaction ; and #3 purchaser may NOT use loan financing (i.e. must all cash and can't have a loan)

The existence of #3 is particularly important in today's lending environment. When representing a seller, an ALL CASH deal will want to know that it is, in fact, ALL CASH and that the purchaser will not even apply for financing.

## TIP NUMBER 2

by Filippo Cinotti, Esq.

Foreign Purchasers of Manhattan Real Estate often take title to the property through a legal entity rather than in their capacity as individuals. Some of the reasons they opt for this can be privacy issues, income tax deferral issues, gift/estate tax concerns, the need or desire to shield the foreign investor's own assets from liabilities arising from the ownership of U.S. real estate, and whether it is expected that additional investors will acquire equity interests in the property.

Agents/Brokers should be cognizant of the fact that certain types of entities in which foreign investors want to take title may not be available to persons that are NOT citizens or permanent residents of the United States, such as an "S Corporation". In using this particular entity the investor would soon discover for one, that it may not be available to them and that the income generated by the U.S. real estate would likely be subject to double taxation. It is imperative that prior to signing the contract of sale the foreign Purchaser receives competent legal and international tax advice as to the proper structure to use in order to accommodate the investment.

## TIP NUMBER 3

by Keith Schuman, Esq.

The standard form of Co-Op contract requires that the Co-Op Board's approval of the purchaser's application to purchase be unconditional. Many Co-Op Boards now require a purchaser to put money in escrow for maintenance as a condition of approval and a purchaser who has been so notified has the right to cancel the contract and recover its down payment. Accordingly, I suggest that when representing a seller, a provision be added to the contract that obligates the purchaser to comply with this escrow requirement if so requested by the Co-Op. This should always be discussed as part of the terms of the deal and referenced in the deal transaction sheet.

# Q&A - Interviews with two TOP PRODUCERS

TONI HABER from 575 Madison Avenue Office and  
FRANCES KATZEN from 485 Madison Avenue

- Q. To what would you attribute your success in this marketplace?**
- TH.** I attribute my success to surrounding myself with better people and to treating each buyer, seller, investor and renter as a complete individual and to cater to whatever their needs are and to really listen and care and to make it about them not me
- FK.** Discipline and passion. My training as a classical ballet dancer instilled in me a focus and loyalty to any task, which endures today. When I started in Real Estate I was \$30,000.00 in debt but no one ever knew that from my attitude and actions. I focused on what could be, not what was.
- Q. Can you share with us two of your goals for 2010?**
- TH.** Two of my goals for 2010 is to raise my standards even more and only have team members that are of the same mind set. Who are all about service, knowledge, and who want to keep reinventing themselves as are times have and are changing. I also want to implement more of what I have learned in the past year.
- FK.** Two goals for this year are to maintain our sales volume in this challenging market and to continue to establish our group as "the best" at what we do.
- Q. How do you keep yourself/your team motivated?**
- TH.** As far as keeping myself motivated, it is part of every cell of my body to constantly challenge myself to learn and grow so I can be the best and give back to everyone and anyone who is open to it. As far as my team, I try to educate them, give them knowledge, insights, experiences which will affect every area of their lives to make them better and feel better. The teach is here when the student is ready! I only have team members who are ready otherwise I have found it's not a fit and doesn't work.
- FK.** I try to lead by example and to always be doing more of what I expect my team members to be doing. I believe in positive encouragement. The fact that I have done something is proof that they can do what I have done and more. I am always telling my team that there are no limits other than those they chose to put on themselves. In return, they push me to be the best that I can be. I am amazed by the energy and talent of my associates! We truly bring out the best in each other!

## KEYBOARD SHORTCUTS

techTips

by Nick Crocco &  
Jack Casais

**CTRL+C** (copy), **CTRL+X** (cut), **CTRL+V** (paste),  
**CTRL+Z** (undo), **CTRL+A** (select all),  
**ALT+TAB** (switch between open items),  
**ALT+F4** (close/quit the active item/program),  
**CTRL+T** (opens a new tab in Internet Explorer or  
Firefox), **CTRL+TAB** (Switch between open tabs  
in Internet Explorer or Firefox)

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