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THE HAMPTONS BUZZ: IT'S A BUYER'S MARKET *by Paul Brennan, Prudential Douglas Elliman*

As senior vice president and regional manager for Prudential Douglas Elliman's nine offices on the East End of Long Island, I'm often asked the question, "What's happening in the Hamptons real estate market?"

My response is always the same: That depends on whether you're a buyer, seller, renter or investor.

As the second quarter of 2010 comes to a close, the real estate pulse of the Hamptons and North Fork is quickening, with a definite surge in both sales and rentals compared to this time last year. Higher Wall Street compensation, historically low interest rates, a still-rising listing inventory, and more realistic home prices are all strong indicators that we are in the midst of a true buyer's (and investors) market.

Since April 30th—when the federal government's home-buying tax credit expired—interest rates have fallen dramatically, from an average rate of 5.34 percent for a 30-year fixed rate loan in April to 4.625 percent in May. As any mortgage banker/broker will tell you, that drop translates to huge long-term savings.

In the first quarter of 2010, residential sales in the Hamptons/North Fork market more than doubled last year's low, signaling strong signs of recovery over the market's "bottom," which occurred in the middle of 2009. Prudential Douglas Elliman reported a 141.8% spike in sales in the first quarter, compared to the same period last year. Overall, the average days on the market shortened, from 182 days to 156 days, and the listing price discount—the spread between the asking price and the

selling price—posted a modest decline from 12.1% to 11.6%.

The luxury market (defined as the top 10% of all sales) was a stand-out after limited activity last year, with 28 sales at or above \$5 million mark, compared to 7 in the prior year quarter. This summer seems to be continuing that trend, marked by the reported \$43 million sale of the Sagaponack oceanfront estate of Joanne Corzine (ex-wife of former New Jersey governor Jon Corzine) by billionaire hedge-fund manager David Tepper. (Much to the chagrin of the local real estate community, that deal was brokered privately.)

In the luxury rental market, a palatial estate in Bridgehampton was rented for \$500,000 for two weeks (an eye-popping \$35,000 a night), making it the highest price ever paid for a Hamptons rental.

By all accounts, the Hamptons market is definitely more robust than in 2009, but there are still signs of vulnerability. A number of rentals that normally would be snatched up by Memorial Day are still lingering, including choice oceanfront properties on Dune Road. And homes that in truly robust market conditions would sell easily, given their location and attractive price, are still struggling to find a buyer.

Having weathered the ups and downs of the Hamptons real estate market for several decades, I predict that it won't be long before buyers and investors look back and lament, "If I had only bought then." But by that time, it will be a seller's market again!-

"UNDERGROUND OIL TANKS UNCOVERED" *by David Gilmartin JR., ESQ.*

From a Buyer's attorney's perspective, the concern of liability in real estate transactions lies in latent defects that result in significant expense to our client the purchaser. Latent defects that have the potential for significant expense are roof replacement, foundation repairs and underground oil tank spills. Any other defects including those of an above ground tank are visible to the purchaser and a house inspector.

This article will address underground oil tanks and the hazards they pose for potential purchasers. Underground oil tanks are susceptible to deterioration and leaks especially those that are more than 20 years old. Those tanks are most likely made of steel and it is only a matter of time before the tank eventually rusts and leaks.

A sure sign of a leaking oil tank is a significant increase in oil usage. Another worry is water intrusion into the tank and its impact on the heating system for the house.

The real significant expense in connection with a leaking oil tank is the clean-up. Clean-ups from leaking oil tanks can range from a few thousand dollars to \$50,000 depending on the extent of the leak.

The clean-up process is regulated by the New York State

Department of Environmental Conservation (DEC) and involves the removal of contaminated soil and removal or abandonment of the old tank. Abandonment (filling with sand or concrete) is less expensive. Removal is safer. The soil must be removed and the tank must be removed or abandoned by a DEC-licensed contractor. The soil must be disposed of at a DEC approved site. Clean soil is then brought to the site and a new tank must then be installed it is better to install the new tank in the basement and not underground. Any leaks from a basement tank are visible and easily fixed.

Most lawyers these days are requesting the right to inspect oil tanks, so for those real estate brokers with listings of houses that have underground oil tanks more than 20 years old, it makes sense to have the tank tested. A recent clean test result will put a buyer's attorney's mind at ease (as much as that is possible) while discovering a spill will surely result in minimizing the clean-up cost. It is easy to imagine the cost savings when considering deliveries of 275 gallons heating of oil to a leaking tank which then results in more deliveries further exacerbating the problem.

Real estate brokers should always recommend only DEC licensed contractors to perform work on underground oil tanks.-

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Attorney tips for brokers

TIP NUMBER 1 by Denise Burke O'Brien, Esq.

Despite "as is" clause, seller gets hit for fraud. If a contract of sale provides that a structure is being sold "as is," you'd think a seller would be insulated from suit should problems with the property later arise. Right? Well, if you said yes, you couldn't be more wrong. (At least as far as the Appellate Term, Second Department is concerned.) In *Macri v. Vandermark*, Macri sued to recover damages he incurred to repair a water leak that was uncovered after the closing. Although the building was sold "as is," Vandermark had represented in the contract of sale that the water system was in "working order" at the time of closing. In actuality, the seller knew of the leak but didn't bother to disclose its existence to the purchaser. The City Court of Newburgh, Orange County, relied upon that "as is" language and dismissed the buyer's case. On appeal, the Appellate Term, Second Department reversed and awarded Macri \$2,500. While finding that the "as is" language precluded a claim for contract breach, nothing prevented the buyer from asserting "fraud" and securing a recovery of the repair costs. Is that the way "as is," is?

TIP NUMBER 2 by Douglas C. Sinski, Esq.

In almost every Contract of Sale, the seller is required to provide a Certificate of Occupancy, or its equivalent, as a condition to closing. It must cover all structures on the premises as they currently exist. If the buyer is obtaining mortgage financing, the bank will insist on receiving the required Certificate of Occupancy as well. In some jurisdictions, such as the Village of Southampton, an updated Certificate of Occupancy is required by the Village on the transfer of any residential property located within the Village. All too often, owners may have improvements done at the property by contractors and then assume that the contractor has obtained the permit. This is not always true. Further, even if a permit was obtained, it must still be closed out before a Certificate of Occupancy/Compliance may be issued. This is very common in the case of in-ground pool installations. Some homeowners do work on the property themselves, such as finishing a basement, installing a shed or other property improvements. They may not even be aware that a permit, final inspection, and Certificate of Occupancy or Certificate of Compliance is necessary. In any case, if the improvements at the property do not match the existing Certificate of Occupancy, the closing may be delayed, or worse yet, cancelled. So, to best prepare your listing for sale, obtain a copy of the most recent survey and compare it with all certificates of occupancy/compliance which have been issued. The same is true if you are a selling broker. Take the survey and Certificates of Occupancy/Compliance and walk the property. Make certain that everything you see is on the survey, and then, that everything matches the Certificates of Occupancy/Compliance. Be especially mindful of finished basements, pools, sheds, detached garages, and tennis courts. Having the proper Certificate of Occupancy/Compliance documentation can make all the difference in a smooth and timely closing.

PDEtitle is your in-house Title Insurance Company working exclusively with PDE agents. Our goal is to ensure that your deals get to the closing table as smooth as possible because we really understand what's at stake and have your best interest in mind. Please contact us at with any inquiries or questions at: 631.425.1027 or www.pdetitle.com.

The "Long & Short" of Short Sales

by Robin L. Long, Esq.

Do you remember the real estate market when it was hot? It was like driving on the Long Island Expressway late at night. There you were alone on the road and doing 80 mph. The radio is blasting Billy Joel and you could do no wrong. Then in the distance, you see a State Trooper. You slow down to 55 mph and feel like you are driving in reverse. No, you are not in reverse, you are just doing the speed limit. This is the real estate market today . . . we are still making deals but the quantity is adjusted by the limits of the current market. Taking my story, just one more step . . . you can make deals in today's distressed market, you just have to know the new traffic rules!

A short sale is not a road block to a commission! If your clients property is now worth less than their mortgages, you don't have to make a "u-turn" and run . . . short sales are viable alternative to foreclosure or bankruptcy and will realize a brokerage fee to the savvy realtor. The key to succeeding is putting together a team that knows how to navigate a short sale through the banking process. As an attorney who negotiates short sales, I know the value of working with an experienced realtor. Setting the price of a house can be tricky with the limited comparatives that can be available for some neighborhoods. However, you must price the property to sell and then be able to back it up with a Comparative Market Analysis or Brokers Opinion Letter. The Analysis is an integral part of the short sale package and will be submitted to the lender (s) as proof of value. Although banks will do their own appraisals, your submission will carry weight. Make sure that the package being submitted to the Bank (s) has your commission bill and listing agreement. More importantly, check that your commission is listed on the proposed HUD statement. If you are not on the HUD, you will not be paid by the Bank. I also work very closely with PDE Title. Although the seller's attorney does not usually order title, it is incumbent upon the attorney to run a judgment search to find out if the property has other encumbrances besides the mortgages. This will have a direct effect on the negotiation. I am never disappointed by the prompt and professional service provided by PDE Title.

The foreclosure process is not a stop sign for a short sale Q & A! It is a long process from your clients being late on their mortgage payments to the property being sold at a court ordered auction. Until the gavel hits the pad, a property can be short sold. So if your clients say that they have been served, you can still help them by putting together a viable deal.

A short sale is the HOV lane for the seller, for the buyer and for the community. A broker called me and said that her buyer was reticent to make an offer on a short sale because she didn't feel good about profiting off the misery of the seller. It is important that you tell your prospective sellers and buyers, that short sales are "win-win" for all the parties and can be the vehicle for moving the housing inventory. For the seller, it presents an alternative to bankruptcy or foreclosure. Even though the sellers has been damaged by the process, the long term effect of short sale is less than a bankruptcy or foreclosure. For the purchaser, it presents an opportunity to purchase a property at the true market value. It makes the unreachable property affordable. For the community, it stops the blight that is spread by boarded up or vacant houses. It will help to diminish the inventory of houses and move properties off the Courthouse docket. For the savvy broker, it presents a new challenging and profitable market niche.

Ms. Long is an attorney with an office in Southampton and over thirty years of experience. She has been presenting educational programs on short sales and other real estate issues to real estate offices throughout the City and Long Island.

techTips

iPad



Apple CEO, Steve Jobs announced today that iPad sales have topped two million in less than 60 days since its launch on April 3rd.

QUICK TIP: When typing an email address in the mail app, the dot key hides additional options. If you hold your finger on it for a second, a range of useful shortcuts appear. Simply slide your finger to the one you want and release.

by Michael Constantine, Director of Information Technologies