



*Bamberger*

# *Homebuyer's Guide*



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Diving into the world of New York City real estate can be an arduous, intense, and at times tedious process. But it's not neuroscience.

We've long searched for comprehensive guides to give to our customers so they can have a better sense of what their journey will look like. Surprisingly, we haven't found one that makes the cut.

So we've decided to create that guide ourselves. Below you'll find a thorough look at every single step involved in buying an apartment or home in New York City, complete with tips, insights, and warnings drawn from our own years of experience. If we've done our job right, we'll have armed you with a handy resource that you can refer to at any point during your quest to become a New York City homeowner.

Make it yours.



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# Homebuyer's Guide

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# I. Getting Started



## *The Turning Point*

### *Are you buying or are you renting?*

Whenever we're first approached by someone looking to buy a home in New York City, we start with one simple question: how long are you planning to stick around?

Investing in Manhattan real estate is heavily marketed as a quick, no-holds-barred return on your investment. But despite the strength and reliability of our market, making the decision to buy can be more of a numbers and time game than many people realize.

Consider the following factors when making the decision to buy a home:

- Historical appreciation rates in New York City. From 1974 to 2017, NYC homes appreciated an average of 9.3% each year. Keep in mind that these averages take into account rises and falls over the course of four decades. If getting a return on your investment is very important

to you, we recommend that you plan to keep your apartment for at least 10 years before selling.

- The projected use of the apartment. Do you plan to use this property as a home for yourself and/or your family? How long do you expect to live here? Do you see this as a pied-a-terre, or perhaps as an investment that you hope to sublet?
- Owner's rights. Are the freedoms of ownership (such as renovating and customizing to your exact taste) very important to you?
- The satisfaction of owning. Will your status as a homeowner give you a sense of comfort and happiness that you cannot find in renting?

## *Determining a Budget: The Mathematical Equation*

How much money are you willing to allocate for the down payment? Separately, assess what your monthly income and liabilities look like currently, and calculate how much added liability you can afford to take on in the form of monthly maintenance (and, if financing, mortgage) payments for your new apartment.

Your investment will break down as follows:

### **Projected monthly carry costs + Current funds required for down payment**

The down payment is the lump sum you contribute at closing (most co-ops require the down payment to be at least 20-25% of the purchase price), minus any financing provided by your lender, and your monthly carry cost is the total of your mortgage payment and maintenance fee combined.

Keep in mind that a co-op will typically look for your ability to pay for around two years' worth of monthly carry costs, after closing. In other words, if your projected monthly carry cost will be \$3,000, most co-ops will want to see at least \$72,000 ( $\$3,000 \times 24 \text{ months} = \$72,000$ ) in cash or liquid assets left over after you purchase the apartment.

## *Looking into Mortgages*

We cannot emphasize enough the importance of finding a good lender when you start looking into mortgages for your next home. Your real estate agent should have a few good referrals to offer, but feel free to consult friends who have recently bought for additional recommendations.

You should also be aware of the advantages of going to a third-party mortgage broker instead of directly consulting a bank. A good mortgage broker will shop around loans at different banks to determine the best rates, advise on the most advantageous types of loans, and will be able to confirm in advance that any building you're interested in has been "pre-approved" by major lenders.

This last detail is incredibly important if you're buying in a co-op building. Banks check to see that a building is well-managed and in good financial standing, as well as whether there is a high rate of owner-occupancy. They run these checks to ensure that the co-op will not encounter difficulties in collecting the monthly maintenance payments it needs to cover its costs and remain financially solvent. Just like any private individual, a lending institution will only want to invest in a well-run and financially stable building.

It's also worth noting that if you can afford to make an all-cash payment, such an offer may give you a slight "bonus" appeal to your potential seller, depending on the situation. Looking past the superficially sexy sound of an "all-cash offer," the real advantage of going all-cash is the speed of closing. Removing a bank's legal and investigative process from the deal can shave off several weeks in the road to closing. For a seller who needs to close as soon as possible, going "all-cash" has a certain perceived value, especially when considering the added risks of a bank slowing down a deal or outright refusing a loan.

### *Your Financing Options*

Co-ops, condos, and even individual sellers have different standards for financing. Here's what you need to know:

- Co-ops usually limit financing to a maximum of 70%-80% of the purchase price for the apartment. Don't rely on whatever the listing states online; get verification from the listing agent, and if necessary, have your broker confirm the exact financing restrictions with the building's management company prior to submitting an offer.
- Condo mortgage requirements are typically looser than co-ops, with most condo buildings allowing up to 90% financing.
- "Contingent versus non-contingent": If you are unable to obtain a loan from a bank to finance your purchase, having a contingency clause in your contract will allow you to walk away without losing your deposit (10% of the purchase price). Contingency clauses have become commonplace in New York City real estate transactions, so requesting that your attorney add one to the contract of sale should

be a simple and easy precaution to take. That said, if you plan to make your purchase financing-contingent, it's extremely important that you (or your broker, if you have one) explicitly state this as part of your offer. Be aware that in a competitive scenario where the seller is fielding multiple offers at once, you may be asked to make your offer non-contingent. This shifts the burden of the transaction from the seller to the buyer, asking you to commit to the deal whether or not you can obtain financing.

### *Getting Pre-Approved*

If you plan on taking a loan, it's important that you get pre-approved by a lender before you start making offers. A pre-approval letter is easy to get and functions as a vote of confidence from a mortgage broker or loan officer that you are likely to be approved for a loan. There is also no obligation involved in getting pre-approved. You can always choose not to apply for a loan, and you are also free to apply for a loan from a different lender than the institution that originally pre-approved you.

In a competitive market like New York City, nearly every seller and seller's broker you encounter will require a pre-approval letter to be submitted alongside any offer involving financing. Just be sure to keep the following details in mind before you proceed:

- There are two ways that lenders vet potential customers: pre-qualification and pre-approval. Some in our industry use these terms interchangeably, but there is a difference. Pre-qualification can usually be obtained by self-reporting your finances and ordering a simple credit check, whereas pre-approval typically requires you to verify your net worth. Be sure to ask your loan officer or mortgage broker how they define pre-qualification versus pre-approval, and then decide which will best help you stand out as a strong candidate to a potential seller.
- Do not get pre-approved more than once. Lenders will run your credit score before issuing a pre-approval letter, and each time your credit is checked it takes a small hit to your overall score. Simply pick one lender or mortgage brokerage that works for you, and stick to their pre-approval for as long as you need it. If the letter expires, you can always get it renewed.
- Remember that banks will continue to track your financial activity between the time of your pre-approval and the time you officially

submit your loan application to purchase an apartment. If you foresee any major changes to your employment, large influxes of cash or large expenditures, it's extremely important that you notify the mortgage officer or broker who is overseeing your application. Banks have been known to refuse loans if there were major changes to an applicant's financial picture between the time they were pre-approved and the time they submitted their loan application for approval.

If you've run the numbers and have determined that the decision to buy is professionally, financially, and personally sensible—congratulations, you're ready to start looking at apartments for sale.



Sample pre-qualification letter

## Working with an Agent Versus Going It Alone

Given the stressful and time-consuming nature of finding an ideal home in New York City, most prospective buyers retain the services of a real estate agent to help them with this process. But we've found that many of our customers don't actually realize they have the option to handle their search and eventual purchase alone, if they wish to do so. Below, we break down which arrangement might better fit your needs.

We believe that **going solo** works best for people who:

- Have bought or sold property in the city before.
- Are well-versed in the nuanced differences between co-ops and condos.
- Come from a sales background, and have an eye for marketing. We find that these individuals have a keen instinct for analyzing the cost to benefit ratio of apartments that have piqued their interest, and are able to separate fact from fiction when dealing with exaggerated listings and less-than-honest listing agents.
- Are employees with fixed wages and regular schedules. Given the amount of time one needs to put aside for daily internet searches, attending open houses, and scheduling private showings, we've found that employees with predictable work hours can usually incorporate their search more seamlessly into their daily routine. In contrast, independent contractors or entrepreneurs may find it difficult to constantly adjust their schedule to unforeseeable demands.

### The Direct Buyer Bias

You should also know that listing agents may in some cases prefer to work with direct buyers rather than those represented by agents. This is because a seller's agent splits their commission when they co-broke a deal with a buyer's agent. With no buyer's agent in the picture, a listing agent stands to take home their full commission. Faced with a situation in which they're poised to make potentially twice the amount of money they'd make on a co-broke, many listing agents are more motivated to get the deal done.

To be clear, this is not always the case. If a listing agent is an ethical and true professional they will advise their seller to choose the buyer who is most qualified to purchase the apartment—regardless of whether or not that buyer is working with another real estate agent. All that said, a listing agent who

claims that dealing with a direct buyer versus working with another agent makes no difference to them whatsoever, would be lying. We believe that prospective buyers should be educated on all the factors that can influence a listing agent's decisions when it comes time to make a deal.

### *The Advantages of Working With A Buyer's Agent*

Beyond the benefits of time saved, there are serious strategic and risk-management reasons to enlist the help of a real estate agent in your quest to buy. Buying a home is a fundamentally emotional decision, and many buyers find that bringing an agent on board adds an impartial, sobering voice to the process. In addition to this, a good buyer's agent will have run the gauntlet of purchasing an apartment in the city dozens of times before they come to work for you. With sizable experience under their belt, a veteran buyer's agent will be able to anticipate deal-breaking problems and prevent them before they occur. The road to closing is filled with a myriad of opportunities for miscommunication and basic human error that could easily upset the apple cart and put your deal in jeopardy. Having a professional buyer's agent on your side can help ensure that you not only find the apartment of your dreams, but even more crucially, that you cross the finish line without losing the deal.

If you do decide to secure the services of a buyer's agent, it's important you do your due diligence at the beginning of your search, and find someone who's a reliable representative of your needs and requirements. A bad buyer's agent can have more catastrophic consequences than even the most ill-conceived plans to find an apartment on your own.

### *So how do you find a good one?*

This will take a bit of sleuthing on your end. Here are some Dos and Don'ts you should take into account when securing a buyer's agent:

- DO your research. This means doing some digging into their background, including taking into account their professional experience and their online presence.
- DON'T skip on the interview process. Think about it this way: you usually put in a little bit of time to find a reliable plumber or painter. Someone who will be finding your dream home should be vetted about three times as intensely. Don't be afraid to grill a potential broker about their services and how they plan on conducting this search on your behalf.

- DO take online reviews with a grain of salt. It's not an unusual practice for agents to force clients to write these on their behalf. That's why we advise you not to put too much stock in the number of transactions a broker has listed online. At the same time, DO take into account any negative reviews you come across related to a potential broker. Weed out the bad seeds where you can.
- DO hire the experts. Does your potential agent have a way of demonstrating their authority on a particular building, neighborhood, or community? Look for blogs or publications where they share their expertise. A prospective agent may come to an interview ready to talk the good talk about an area you're interested in, but always ask them to follow up with links to their works or writing.

### *A Word to the Wise: "Premier Agent" and The Zillow Monopoly*

Over the past decade, the online real estate databases StreetEasy, Trulia, and their mother company, Zillow, have revolutionized the way individuals and agents do their business in New York City. On one hand, their easy-to-access listing services have made it simpler and faster than ever for agents to share information about apartment buildings and units with potential homeowners. But when it comes to contacting real estate agents, there's a hole in the system we think you should know about.

Given their monopoly on virtually all apartment and home listings in the city, Zillow makes its profit through advertising revenue, particularly through agents aiming to drum up business through the company's various sites. You might expect this advertising to take the form of banners or spots on the website. The reality shares little in common with traditional marketing practices.

Say you come across an apartment listing on StreetEasy. The pictures look great. You want to know more. You're not currently working with a real estate agent, and you see a contact form featured prominently on the page. Taking the logical next step, you fill out the form, hoping to get in touch with a listing agent for the apartment who can provide further information. And although many unaware buyers do the exact same thing, these inquiries do not reach sellers' agents. Your message is instead redirected to a buyers' agent who paid Zillow for your contact information. You're now the "premier agent's" newest lead, or prospective customer. Zillow has no vetting process for this program, and there are no professional or experiential requirements, either. Zillow is looking for individuals who are willing to pay their company for leads, so they can in turn hit revenue targets and find customers willing to provide user feedback.

We find that most prospective buyers in New York City are meeting their agents through this advertising strategy. While many people have been satisfied with the quality of their representation, we feel the need to acknowledge that it's a pay-to-play scheme, and that many people who resort to buying these types of leads are probably those with the least amount of experience in the real estate world.

### *The Mark of Quality*

That's why we recommend you consider enlisting the services of a seller's agent if you're looking to buy. Listing agents tend to be better brokers—there's more skill and knowledge involved in marketing a home than there is in searching for one. Do the rounds on Sunday open houses in your area to see these agents at work; vetting their skills in this type of environment is a reliable method to test their chops as professionals.

### *FAQ – Should you sign a buyer's broker agreement?*

We get a lot of new New Yorkers asking us this question. This is a practice done elsewhere in the country, but not frequently in our city. In these circumstances, it's less of a legal document and more of a psychological commitment on the part of the buyer. There's no real reason any broker should ask for one, and you shouldn't sign one unless there's a clear reason for doing so.

For some perspective, we would only require this type of document if our client demands a very unique piece of real estate in a very short amount of time, that would involve cold calling and a larger investment of man power on our end of the equation.

### *FAQ – Are buyers' agents free?*

Commission is always paid by the seller, so in effect, a buyer never actually pays for the services of their broker. But a good agent pays for themselves, by helping your through the nuances of the process and sourcing great listings for you to consider.

## *II. The Search*

### *Co-ops Versus Condos: A Quick Rundown*

**Co-ops** make up the majority of residential buildings in Manhattan in which you can own (though with the recent influx of new condo developments, that number is starting to change). Many of today's co-ops were originally rental-only buildings, and were converted in the '70s and '80s to cooperative ownership. When purchasing in a co-op, you will be assigned a stock certificate indicating the number of shares that correspond to your new apartment, along with a proprietary lease that outlines your rights and responsibilities as a shareholder.

Buying into a co-op is similar to joining a private club, and the application process almost always entails a thorough vetting of your finances and professional references. This process culminates with a board interview and final approval (or rejection). While intrusive, you'll be grateful for the board's entry requirements once you're on the inside. Co-ops need their shareholders to be considerate and reliable neighbors, and a disruptive or financially irresponsible shareholder could cause great



financial cost and diminish quality of life for the whole building. As such, many co-ops have rules in place to encourage owners to use their apartments as primary residences, rather than investments or pied-a-terres.

Co-ops are generally more affordable than condos, for two reasons. The first is that co-ops are simply more commonplace in New York City, with condos being comparatively rare and largely confined to specific areas (the Financial District and Hell's Kitchen are both well-known for their recent condo developments). The second reason is due to the financial structure of a co-op. Utilizing a collective form of ownership, a co-op can delay the cost of its initial conversion, as well as any subsequent capital improvements and repairs, by obtaining a single large mortgage under which all shareholders contribute to paying back the loan over time.

**Condos** are the closest Manhattan apartments come to owning a single-family home. Purchasing a condo apartment gets you a deed stating your title to the unit as a piece of real property. Although co-ops were all the rage in the '70s and '80s, a demand for greater autonomy in ownership and the prevalence of foreign investors in Manhattan has sparked a new wave of condo developments in the last 30 years.

If co-ops are known for encouraging owner occupancy, Manhattan condos are distinguished by their *laissez-faire* approach to apartment usage. The same floor in a given condominium could house investment rentals, foreign diplomats, pied-a-terres, and company apartments for employees on business trips. If you're an investor or value the ability to rent your apartment after you move out, this might be exactly what you're looking for. But if you're concerned about the quality and consistency of your neighbors, and want to take an active role in charting the future of your building, consider a co-op instead.

Unlike most co-ops, condo boards govern with the right of first refusal. This means the board can only block the sale of an apartment to you by purchasing it with the condo's funds themselves, for the same price you agreed upon with the seller. The right of first refusal is seldom exercised, and in our years of experience, we've never seen it happen.

As we noted previously, condos are generally sold at a premium over co-op apartments. This is because, unlike the forgiving flexibility of a co-op mortgage, condo developers do not have the option to delay repayment of their construction loans by passing them off to individual owners, and must instead repay their debts by selling apartments at premium prices. This, coupled with the greater flexibility afforded to condo owners, places condominium apartments at a generally higher price point in Manhattan real estate.

### *Communicating With Your Broker*

During your apartment search, your agent will be sending you curated sets of listings based on your preferences and needs. They will also schedule your appointments. If you are looking for an apartment but are based outside of the city or country, your agent should be happy to preview apartments on your behalf and report their findings to the best of their ability.

### *Timing Your Visits*

You can visit most of the units on your radar on weekends, when most open houses are held, but if you have scheduling conflicts, listing agents will usually be willing to accommodate showings during the work week.

### *How to Tell if an Apartment is Right for You*

Beyond the immediate "gut instinct" feeling that will decide your attachment (or lack thereof) to each apartment you visit, there are a few objective tests you can run to vet your prospective purchase. Although the majority of heavy-lifting research will be performed by your attorney later on during her due diligence review, we recommend taking the following basic steps to verify whether that alluring listing you've discovered is the real deal.

### *Assess the Building*

1. Get your hands on the most recent financial statements of the building in question. You and/or your broker should be inspecting the last two years of the building's financials to spot any indications of previous increases in maintenance or potential future capital assessments, which you should in turn factor into your offer.

#### *Co-op buyers, take note!*

Remember, buying into a co-op opens yourself and the current shareholders to a new financial vulnerability. It's only natural that you should comb through each other's finances to ensure this is a safe investment for both parties.

2. Find out about any recent repairs, maintenance work, or capital improvements. Make sure your building-to-be can present documentation for any work that was recently done on roofs, boilers, steam and gas, as well as Local Law 11, which requires periodic maintenance to a building's façade, including repointing jobs for brick buildings. You and/or your broker should also analyze the results of these assessments—was the board able to pay for these projects with the building's cash reserves? Did they need to take a loan or refinance

## III. Doing the Deal

their current mortgage? Will there be an upcoming assessment to replenish the funds spent on the job?

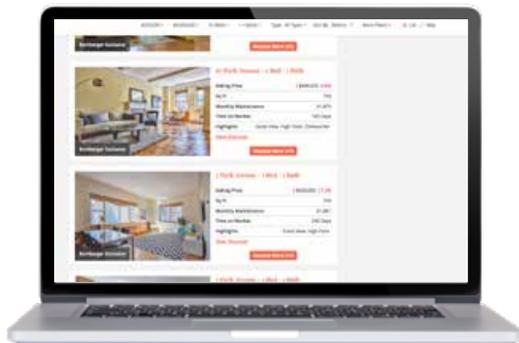
3. Examine the building's underlying mortgage. This is especially important if you're considering buying into a co-op building. What is the current interest rate and remaining balance, and when does it need to be repaid? Also be sure to check if the building is on a land lease. Land leases in Manhattan are uncommon, but if you find one beneath your building of choice, it's your business as a buyer to learn everything about it so you can determine how it will affect your investment.

### *Introduce Yourself*

"What kind of people live in the building?"

You're probably curious to learn about your potential neighbors. Don't bother asking a broker; federal fair housing laws prohibit real estate agents from discussing the demographics of a particular building or area, as it could result in "steering" a prospective buyer towards or away from a neighborhood based on race, religion, or other protected classes. But even without this restriction, we'd strongly advise against relying on a broker's hearsay or secondhand gossip over personal experience. Even a listing agent who lives in the building could be highly unreliable, as what is a relaxing or stimulating atmosphere to one person could be a hostile and irritating environment to another.

Instead, consider hanging out in the lobby and introducing yourself to a few of the residents who pass through. Many will be flattered by your sincere interest in their building, and they'll probably welcome the opportunity to brag (or complain) about any significant factors that have affected their experience as a resident. At the very least, strike up a conversation with the doorman and get his perspective on life inside the building. Each of these small interactions can help paint a picture of how this community will complement or clash with your own lifestyle.



### *Submitting an Offer*

So you've finally found the apartment you've been looking for. The space, the location, and the numbers all fit the bill. How you prepare your initial offer is a sensitive and nuanced process, and it should go without saying that doing your research beforehand could make the difference between landing the apartment of your dreams, and wasting your time on a stressful and frustrating negotiation that goes nowhere.

It's essential that you cover the following steps before making an offer:

1. **Research the listing.** In order to place an offer that is fair to you and attractive to the seller, you'll need to gather as much information on the listing as possible. If you've decided to work with an agent, this fact-finding mission is their time to shine. A great buyer's broker should be able to extract critical details about the sale from the seller's agent. This kind of opposition research is half the battle, and most buyers lack the skills or experience to do this properly on their own. Even if an unrepresented buyer can develop a good rapport with a seller's agent,

most brokers will be less forthcoming with buyer customers as they would be with a fellow real estate professional, who can empathize with their situation. With the help of your broker, you should try to gather as much of the following information as possible:

- The seller's reasons for moving and any relevant timetables that could be influencing their decision to sell.
  - The seller's (and in a co-op, the board's) preferences for purchase arrangements (co-purchasing versus gifting, financing versus all-cash, contingent versus non-contingent, etc.) and usage of the apartment (primary residence versus pied-a-terre, subletting, etc.)
  - The seller's personal experience in buying and attempting to sell the apartment. How much did they pay for the unit, and when did they buy it? Have they tried to sell it in the past? How long has the current listing been on market? Has the seller reduced the price during the listing's lifetime? Note that all of this information can usually be found on StreetEasy—either on the main listing page, or under an apartment's Price History section.
  - Finally, have the seller answer in writing any additional questions you may have about the condition of the apartment. Apartments in New York City are sold in “as is” condition, meaning you will be expected to accept the apartment in its current condition. You can save yourself time and headaches by asking the seller up front to address any concerns you may have about the apartment's fixtures, appliances, or overall condition.
2. **Research the Comps.** Studying “comps,” or apartments that are comparable in size, location, and amenities is the most efficient way to determine market value. Look through all comps that are currently in contract, as well as recent sales from the past 3, 6, and 12 months to get an understanding of what this apartment is actually worth. Keep this list handy in case you need to share it with the seller's broker to explain your offer. There's a reason an accepted offer is referred to as a “Meeting of the Minds”—any actionable data you can provide to support up your offer could go a long way at keeping the conversation civil and rooted in objective facts.

#### *A Note on Square Footage*

We've noticed that some buyers (especially out-of-towners) place a high value on price per square foot. Considering the prevalence of square footage estimates in suburban

real estate, it's an understandable habit. That said, when it comes to Manhattan apartments, the square footage amount advertised is almost always inaccurate. Depending on the apartment, developers and private owners are legally allowed to take square footage measurements that include space between walls, space in the hallways outside the apartment, and space several inches past the facade of the building. In addition to this, most co-ops shy away from providing official square footage estimates as they distribute operating expenses based on the number of shares assigned to an apartment, not its square footage. For all these reasons, we caution buyers to ignore whatever square footage quotes they see online. If you are concerned with exact sizes, you're better off bringing along a tape measure when you view apartments in person. You'll likely find that your own “usable” square footage (or wall-to-wall) measurements will consistently land 15-20% below whatever is advertised on the listing, if not less.

3. **Prepare your financial statement.** It's standard practice in New York City for buyers to submit a 2-page financial statement along with any offer. This financial statement, or as some brokers refer to it, the “REBNY statement” (as this practice was standardized by the Real Estate Board of New York), is a brief, self-reported summary of your net worth, listing all assets and liabilities. For the uninitiated, this step may come as a rude surprise; after all, who are these real estate agents, and who is this mysterious seller, to request such personal financial information up front? The truth is that the REBNY statement doubles as a test of your seriousness and readiness as a buyer. If you are truly ready, willing, and able to act on your offer, your financial statement (and your willingness to provide it immediately) will reflect this. Because NYC real estate runs on an erratic and generally faster timetable than real estate markets throughout the rest of the country, sellers and sellers' brokers will expect a financial statement from you before they seriously consider any offer you submit. When it comes to co-ops, the financial statement plays a second, equally important role: it allows the seller to determine at a glance whether or not you will be a safe candidate to place before the board. Taking an apartment off market only to have the buyer rejected by the board can be very costly and stressful for a seller, and the sooner you can demonstrate your qualifications for board approval, the sooner your potential seller can determine whether or not to accept your offer.

Your agent will suggest an offer based on the available comps, as well as any details about the sale they were able to extract from the seller's agent. Along with the actual dollar amount of your offer, you will include your financial statement and, if financing, your pre-approval letter. If there are any other details which will significantly affect your purchase, it's extremely important that you include them up front, in writing, as part of your initial offer to the seller. These details might include, but are not limited to:

- A proposed closing date.
- Whether your offer is contingent or non-contingent on financing.
- Specific fixtures, appliances, or furniture that you want included in the sale, excluded, or repaired before closing.
- Keep in mind that apartments in New York City are sold in "as is" condition. This means the seller is only responsible for delivering the apartment, broom swept, in the condition you accepted it at the time you signed the contract. If there are any updates or repairs you would like guaranteed before you close, now is the time to get those assurances in writing from the seller. The attorneys will then draw up the contract to reflect these points.

Once your offer has been submitted, the seller will respond in one of three ways: accepting, rejecting, or making a counteroffer.

## *Negotiating the Deal*

Every person has their own style and subjective instincts when it comes to negotiating business. The seller, her real estate agent, you, and your real estate agent may each have a different gut feeling about the direction of the sale, and all four parties could easily disagree on best practices when it comes time to negotiate. For all these reasons and more, we'll refrain from making generalizations about how to negotiate your deal. Instead, we feel it's most helpful to emphasize three basic principles that frequently get lost in the process of negotiating.

1. **Never negotiate without knowing where you want to land.** Ask yourself the following questions: what is the highest price you are willing to pay for this apartment? Are there any terms that are completely non-negotiable for you? Considering the apartment you are offering to purchase, what is truly important to you, and what are you willing to sacrifice? You'd be surprised how often buyers start haggling with sellers without first establishing their own priorities.

2. **Don't fuss over dollars and cents and other minutiae.** Is there a broken wall tile the seller refuses to fix? Is the seller's counteroffer a couple thousand dollars more than your ideal price? Before you get bent out of shape over minor details, ask yourself, again, whether or not this is the right apartment for you. All that really matters is whether you're buying the right apartment at a fair price. That's it. If this truly is the home for you, whatever annoyances you feel during the transaction will likely disappear from memory within a couple weeks after moving in.
3. **Don't waste your and others' time.** The point of negotiating is to reach a meeting of the minds. If it feels like that goal is becoming increasingly distant and far-fetched, whether due to the seller's pettiness or your own waning interest in the apartment, it's probably time to pack up and move on.

With any luck (and, hopefully, some expert skill and guidance from your real estate agent,) you will have reached a meeting of the minds with the seller. It's time to retain an attorney.

## *Attorney Due Diligence*

### *Choosing a Real Estate Attorney*

Similar to finding a real estate agent, it's important that you choose an attorney who has done a good amount of business in Manhattan and has specific experience in handling transactions similar to your own. Your broker should be able to recommend at least two different attorneys to get started. Ideally, they will be located in New York City and well-versed in co-op/condo due diligence processes. Consider meeting your attorney in person prior to purchasing in order to hash out any particular questions or concerns.

### *Attorney Fees*

A good real estate attorney will typically charge a flat rate of \$2,500 to \$3,000 to represent you in purchasing an apartment priced \$2.5 million and below. You will typically pay a portion of the fee up front as part of the retainer, and pay the remainder of the fee at closing.

### *Beware "Discount" Attorneys*

This should go without saying, but we've seen too many deals fall apart due to attorney incompetence not to warn you: stay away from discount attorneys.

You are paying for a service, not a product; expect a below-average attorney fee to result in below-average work. Considering the rarity and the importance of the transaction you are about to enter into, ask yourself if gambling on a discount attorney makes sense before you decide who to retain.

### *Contract Negotiation and Attorney Due Diligence*

Once you've retained an attorney, the seller's attorney will send them a contract of sale that reflects in legal form the terms of the deal to which you've agreed. Your attorney will review the contract to ensure it protects your interests, and may make comments and changes to the contract as needed. She will also perform her due diligence review of the building's finances and governing documents. These include:

- **The Offering Plan:** This "blueprint" first established the building's ownership structure and outlines the rights of owners (in a condo) or shareholders (in a co-op). The offering plan was drafted by the developer or sponsor who originally converted the building to its present form of either co-op or condo. You can think of the offering plan as the legal declaration which brought the condo or co-op into existence.
- **The Proprietary Lease:** This document is unique to co-ops. It outlines the operational rules and regulations for the cooperative, and defines your rights and responsibilities as a shareholder (the lessee) and those of the co-op (the lessor). If the board of directors is the co-op's government, the proprietary lease is its constitution. If the co-op has made any amendments to the proprietary lease since its original conversion, your attorney will review these as well.
- **The By-Laws:** In a condo, the by-laws spell out the operational rules of the building and the legal limits of the board. In a co-op, the by-laws are typically a subsection of the proprietary lease discussed above.
- **The House Rules:** These contain the day-to-day rules of the building. The procedure for proper garbage disposal, pet policies, guest policies, staff responsibilities, and other quality of life items will be contained in the house rules.
- **Financial Statements (Last 2-3 Years):** As a prospective shareholder (of a co-op) or owner (of a condo), you're entitled to inspect the financial picture of your building-to-be. A good real estate attorney will be able to walk you through all capital improvements, new loans, refinancing, or even lawsuits that took place in the past two to three years.

*Co-op buyers, take note:* Just as the board is scrutinizing your financial qualifications, you have every right (and should exercise that right) to scrutinize their co-op's finances to verify that you are making a safe investment. Is the board fiscally responsible? Are they balancing the building's short-term operating costs with long-term capital improvements? The board's financial decisions will directly affect you as a shareholder, and it behooves you to do this research up front before you sign a contract.

- And, finally, copies of the **latest purchase and (if allowed) sublease applications.**

In addition to these items, your attorney will submit a questionnaire to the building's management company and request an appointment to review to the board's minutes. These minutes will contain a record of all official board meetings from the past few years. If there have been any major issues or signs of mismanagement, your attorney will be able to spot the red flags during their review of the board minutes.

Expect your attorney to take between 5 and 10 business days to complete her review, depending on the responsiveness of the seller's attorney and the building's management company. It's important to note that there is no deal until the contract is executed by both parties. This means that the seller's broker will likely continue showing the apartment until you sign the contract. Likewise, out of fear that the deal won't go through, you may continue shopping and visiting apartments until the contract is signed. During this uncertain time, it's important you stay calm, rational, and realistic about the process, and let your attorney do her job thoroughly before she gives you the green light to sign.

Assuming all goes smoothly, your attorney will send you a due diligence memorandum and review the contract with you before signing. Along with your signature, you will be responsible for an "earnest money" deposit (10% of the purchase price). This contract deposit will sit in the attorney's escrow account until closing, when it will be applied to the balance of your down payment.

Following your signature, a physical copy of your signed contract is printed and delivered to the seller's attorney along with the contract deposit. A responsible buyer's attorney will only release the contract with your signature and deposit check when after you give them explicit written confirmation, because once the contract is delivered to the seller's attorney, you'll have committed yourself to the purchase. Pending approval from their attorney, the seller will countersign, rendering the contract fully executed. Congratulations on getting this far!

## IV. The Road to Closing



### *The Board Package and Board Approval*

This may be a good time to return to our breakdown of the differences between co-ops and condos, listed previously in this guide (see: “The Search”). Every board package has nuanced differences in its requirements and structure—even down to the exact number of copies you must submit to the board. But in almost every case, you’ll find all the answers you need by carefully reading the instructions in the purchase application, taking notes, and forwarding any questions you may have to the seller’s real estate agent or to the Transfer Agent at the management company in charge. For now, here’s a quick recap of what to expect with your board package:

#### *Board Approval In a Condo*

- Purchase applications for condos are typically brief and straightforward. For all-cash purchases, you will be asked to provide proof of funds. If financing, your biggest concern when purchasing a condo should be getting the bank to approve the loan.

- A condo board governs with the right of first refusal. If for whatever reason the board decides to reject your application, the condominium will need to come up with the funds to purchase the apartment directly from your seller. Exercising the right of first refusal is extremely rare and seldom seen in New York City real estate.

#### *Board Approval in a Co-op*

- Co-op board packages are where New York City real estate gets its reputation as exclusive, invasive, and exhausting. Expect to give a full and total account of your net worth. Tax returns from the last 2-3 years, bank and brokerage statements from the past 2-3 months, verification of income, and multiple professional and personal letters of recommendation are all standard fare in a co-op board package. To the uninitiated, this process can feel daunting and unnecessary. Keep in mind that by admitting you into their building, the board is opening their cooperative to a new point of vulnerability. In order for their community to survive, they will rely on you to be a considerate neighbor and a fiscally responsible shareholder. Co-op ownership is a two-way street, and the board package is their way of making sure you are a safe and worthy investment.
- The board and their management company may have specific questions about your assets, liabilities, or aspects of your professional and personal history that may come up during their review. Answer their questions politely and promptly, and don’t lose your patience if they request additional paperwork. If you are a good fit for their community, your compliance with their review will help them arrive at the right decision and approve your purchase.
- Don’t fret if there’s a delay in the review of your board package. Remember, the members of these boards are volunteers, with jobs and schedules and holidays they observe. These are all factors that can prolong the process, and don’t necessarily reflect poorly on the quality of your board package.
- If all goes well, the board will reach out to you after 2-3 weeks to schedule an interview. This is usually an informal meet and greet, in which the board may ask if you’ve read the building’s house rules, and what appeals to you about your apartment and living in the neighborhood.

Note that the board will only request an interview with you if you are already very close to being approved. If something in your application raised a red flag or if you are financially unqualified for the building,

the board would not risk meeting you in person as rejecting you would expose them to a potential discrimination lawsuit.

- As a general rule, the more information you provide in your board package, the better it will help your chances of approval. The inverse is true for the board interview. The less you say about your personal life, your intended use of the apartment, and the less comments and questions you have for the board, the better. The point of the interview is strictly for the board to put a face to your name and to get a sense of who you are in person. If you take the opportunity to discuss your passion for the drums or to ask when the board will replace the building's unsightly art piece in the lobby, you're hurting yourself more than you are helping.

### ***Bank Appraisals and Getting Cleared to Close***

If you are financing your purchase, you will also be working on your mortgage application during this time. Keep an open line of communication with your loan officer or mortgage broker to ensure that you are hitting the appropriate deadlines. With so much emphasis placed on the board package, it can be easy to forget that the bank also needs to sign off on your purchase before you can schedule a closing date.

At some point before closing (usually within 1-2 weeks after you've signed the contract), an appraiser will contact the listing agent to schedule an inspection of the apartment. During this review, the appraiser will assess whether or not the apartment is worth the price named in your contract of sale. Appraisals in New York City apartments usually go off without a hitch, but in certain extreme circumstances—for example, if the apartment has an expensive custom renovation or some unusual sentimental value that the buyer is willing to pay for—the appraised value may fall short of the contract price. In this scenario, you would either be forced to pay up the difference between the appraised value and the contract price, or, if you have a financing contingency, you might be able to walk away and keep your deposit.

Assuming all goes well with the appraisal and you meet the lender's requirements to obtain financing, you will receive the all-clear from the bank shortly after you have board approval.

Congratulations! You are now cleared to close. At long last, the attorneys will coordinate with the building's management company to schedule a closing date.

### ***Final Walk Through***

It's standard practice to perform one final walk through of the apartment prior to closing. This is usually done the night before the closing date, but you should be able to schedule a time with the listing agent that fits your schedule. At the walk through, you will inspect all appliances, outlets, and fixtures included in the sale. If you agreed to purchase any specific furniture or other items from the seller, be sure to check that these are all present as well. Remember that the seller is only required to leave the apartment broom swept and in the same condition in which you agreed to purchase it.

### ***Closing***

The big day has finally arrived. Communicate with your attorney to ensure everything is in order, and make sure to bring any required paperwork and checks to closing (these requirements should be spelled out in your purchase application). It's not uncommon for a management company to request that the purchaser bring their move-in fees and deposits to the closing. And if you haven't already bought homeowners insurance, be sure to ask your attorney or real estate agent about any insurance requirements for the building. Some buildings will request that new owners take out insurance policies prior to moving in.

Lastly, remember to ask the seller's agent or the management company for the superintendent's phone number so you can coordinate your move-in. Consult the purchase application for specific instructions and insurance requirements before you hire a moving company.

Closings are usually held in an attorney's office or at the management company. After initialing and signing some final paperwork, you will be presented with official proof of ownership (a deed if you are buying a condo; a stock certificate if you are buying a co-op). Congratulations! It's now time to get your keys and have a final sign-off with your real estate agent, who may come equipped with a housewarming gift.

There's not much to do from here: consider changing your locks, call your utilities and service providers to update your accounts, and update your mailing address. Once you've wrapped up the nuances, and once you've dealt with the move-in, consider taking a day or two off to enjoy the perks of what is hopefully your dream home.

Passing through the gauntlet of New York City homeownership is no small feat. Take pride in your accomplishment and the knowledge that you've reached a great milestone in your life.



# *Bamberger*

*We want to hear from you.  
Please don't hesitate to reach out—we're available  
anytime via phone or email.*



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