

BEFORE YOU BUY A COOP OR CONDO

THE PHYSICAL ASPECTS

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When purchasing a unit in a cooperative or condominium, most consumers focus on location, size, amenities, and the price. Equally important is an analysis of the physical aspects of the property. This is true for newly constructed buildings, as well as existing buildings that are being converted to a cooperative or condominium. Physical aspects include more than just how the property “looks.” Physical aspects include the quality and condition of basic building components such as the facade, roof, flooring, appliances, sub-soil conditions, elevators, air conditioning and heating systems, windows, electrical wiring and plumbing. Many people who have little or no technical training are intimidated by these issues and overlook them entirely, trusting that all is well or that experts will take care of these problems. Whatever your training, purchasers should develop an understanding of these issues in order to fully appreciate what they are buying and to better protect themselves from unpleasant surprises about the actual physical conditions of a major investment.

The New York State Office of the Attorney General has promulgated regulations that govern the offer and sale of interests in cooperatives and condominiums. Sales of cooperative and condominium units are made pursuant to the terms and conditions of an offering plan. The Real Estate Finance Bureau reviews offering plans to ensure compliance with Attorney General's regulations, as well as Article 23-A of the New York General Business Law (the "Martin Act") and other applicable laws. Every offering plan includes detailed information related to the physical aspects of the building or group of buildings being offered, whether it's new construction or an existing building or group of building undergoing conversion. This guide highlights certain requirements of the Attorney General's regulations, problems that frequently arise, and the necessary steps buyers can take to protect themselves.

The Attorney General highly recommends that a prospective purchaser read the entire offering plan and to consult with an attorney BEFORE signing a purchase agreement. The purchase of a unit in a cooperative or condominium has many significant legal and financial consequences.

1. NEW CONSTRUCTION

A buyer of a unit in a building or group of buildings that is under construction should first understand that the text of the offering plan governs the sponsor's obligation regarding the size and construction of the buildings, units and any ancillary spaces such as recreational facilities, parking spaces, or roof top cabanas, to name a few. Selling agents frequently make grandiose statements about ancillary spaces or amenities in the unit that, if not specifically promised in the offering plan, are not required to be delivered and probably will not be. Buyers must therefore carefully read the “Description of Property” section in the offering plan to determine the sponsor's obligations and should ***not rely*** on advertising brochures, verbal statements from selling agents or beautiful pictures of architect's renderings.

What To Look For In The Offering Plan

The following are some of the problem areas about which there are frequent misunderstandings and discrepancies between what is stated in the offering plan, what is promised by a selling agent and what is actually delivered:

Recreational Facilities: The Attorney General's regulations require that such facilities be described in detail and that the offering plan include floor plans of recreational buildings, a description of equipment to be installed and details regarding size and materials to be used in the construction of such things as pools and tennis courts (whether they will be blacktop or clay, whether there will be outdoor lighting, etc.)

Landscaping: The regulations require that the landscaping be disclosed in detail, including such things as the number and type of trees to be planted, the approximate number of bushes, whether the grass will be sod or seeded topsoil, whether there will be an underground watering system, etc. However, in most developments, sponsors install minimal but adequate landscaping, and when purchasers want an upgrade of this item, they must pay for it themselves.

Appliances and Amenities Within Units: The Attorney General's regulations require that the offering plan contain the brand name, the types and the model numbers of appliances to be installed, which gives the buyer information on the quality of those appliances, and whether the home will contain any other amenities such as a fireplace or jacuzzi. Keep in mind that if the item is not promised in the offering plan, the sponsor is not obligated to provide it and probably will not, except at substantially higher prices. Offering plans frequently state that the sponsor can substitute equal or better appliances, but not appliances of lesser quality.

Facade: Low rise homes can have various kinds of siding including wood (pine is cheapest, cedar is the most expensive; plywood is not as good as lumber), vinyl (cheaper than wood and costs less to maintain), or brick. Many larger buildings in urban areas have facades made of materials such as brick, cement or exterior insulation finishing system ("EIFS"). Purchasers may wish to consult with an architect or engineer to understand the differences between façade materials. Purchasers should also review the offering plan to determine whether the sponsor is providing any form of warranty with regard to the façade.

Frames: Most low rise homes are wood framed but some are steel with concrete floors; buyers should know how their homes are built. Larger buildings in urban areas are almost always steel construction.

Common Areas: For townhouse type developments that have grounds around the homes, buyers should read the offering plan with respect to roadways (the thickness of each layer should be listed) and whether they will continue to be owned by the condo or dedicated to the town or village; sidewalks, if any; drainage systems; and retaining walls. Occasionally there are discrepancies between what is listed in the offering plan and what is provided, and buyers need to know what is in the offering plan.

Perhaps the most difficult task for a buyer is to get a general sense of the quality of construction of the development. In other words, is the builder using top quality materials (which many builders claim) or is the builder constructing in a second rate manner. Without incurring the expense of hiring a professional to read the offering plan or inspect the property, a buyer can easily do some simple, common sense investigating. For example, the offering plan will state the manufacturer and model number of windows to be installed. A phone call to a window supplier listed in the telephone directory can reveal to the buyer whether the windows are top quality or merely serviceable. Similar inquiries can be made regarding the heating unit, the hot water heater, the air conditioner, and the kitchen, bathroom and laundry room appliances. An investigation revealing these items as of average quality does not render the home necessarily defective. However, the price of the home should reflect that quality.

What To Look For Before Closing

There are many things that a person without technical training can do to inspect a home before closing:

- * Test all of the appliances;
- * Test all of the plumbing, open all faucets, see if the water pressure appears satisfactory and the drainage is sufficiently rapid;
- * Test the heating system to make sure it goes on when the thermostat is adjusted to a temperature above the temperature in the room; this can also be done in summer.
- * If there is central air conditioning, turn it on to make sure it works;
- * Make sure heat is delivered through the ducts or radiators to all areas of the home; again, this can usually be done even in summer;
- * Bring a thermometer and test whether the temperature in the rooms furthest away from the heat source are warm; in summer do the same for the air conditioning;

- * Examine the ceilings and walls all over the house for spots which might indicate leaks;
- * Examine the basement for spots on the floor which could indicate flooding;
- * Look for loose wires and electrical fixtures without covers, particularly in the basement;
- * Look for cracks in concrete foundation walls and concrete floors (but note that thin, hairline cracks can also be normal in concrete because concrete shrinks when it is drying);
- * Make sure all the doors and cabinets open and close easily (some settlement of the building is normal and is to be expected, but excessive settlement will make doors and cabinets hard to close);
- * If there is an attic, check to see whether the insulating material covers all floor areas and make sure the vents at the top of the roof and at the sides of the attic are open; air must flow freely in attics to prevent ice damming problems, which cause leaks;
- * If there is a fireplace, test it with a piece of burning newspaper to make sure it draws;
- * Read the description of property in the offering plan and make sure it conforms with what you see in the walkthrough.

The written list of defects produced in the walkthrough is known as a "punch list" and the builder must either repair those defects before or after the closing of title. If the work is to be done after the closing, the punch list and the builders written commitment to correct the problems become part of the closing documents and should be expressly listed as surviving the closing. Sometimes the builder may take the position that a particular defect noted by the buyer, such as a small crack in a basement floor, is not a defect at all, in which case it is not inappropriate for the buyer to ask for a written statement from the sponsor's engineer or architect confirming that the defect is not significant.

The Housing Merchant Limited Warranty Law

In 1989, the State of New York passed a law to protect buyers of new homes. It is known as the Housing Merchant Limited Warranty Law (General Business Law § 777 - 777b) and, briefly stated, it provides that

the seller of a newly constructed home of five stories or less guarantees the home for one year against almost any defect, for two years against defects in the mechanical systems of the home (such as the heating or plumbing system) and for six years against structural defects. The law contains detailed provisions as to how the buyer must provide written notification of the defects to the builder; those provisions are spelled out in the offering plan and must be strictly followed or the repair of the defect is waived. Certain items which occur normally and are considered maintenance items are specifically excluded from the warranty. A typical example is a small amount of nail popping through sheetrock which is caused by normal settlement of the building. Homeowners should read these provisions carefully.

2. EXISTING BUILDINGS

For purchasers of dwelling units in an existing building or group of buildings that are being converted to cooperative or condominium ownership, the situation is quite different. The sponsor is required to have the building evaluated by an engineer and the offering plan must disclose all of the defects visible to that engineer or known to the managing agent as a result of complaints. Not every defect has to be corrected, so long as it has been disclosed. It is rare for an existing building to be without any defects, so it is incumbent upon prospective purchasers to read the offering plan carefully.

What To Look For

Besides reading the offering plan section which describes the physical condition of the building, there are several things buyers can do to become informed, and protect themselves when purchasing. One is simply to ask the sponsor and/or the selling agent, in writing, for a list of defects known to him or her. Another very good source of information about a building are the minutes of board meetings. If a prospective buyer reads through the minutes of the board meetings that have taken place over the previous year, whatever defects exist in the building are likely to be described. The most recent financial report may also contain information about defects, such as the actual or potential cost of certain repairs, in the accountant's footnotes. It is also valuable to check the report for posted violations or contact the local building department for a current list of any such defects.

In existing apartment buildings, there is always a need for repairs and maintenance of the building. A buyer should not be deterred by a need for some repairs, but the buyer should be aware of potentially expensive building-wide repairs and should know how much such repairs are likely to cost.

The most expensive problems in existing buildings involve facade defects. Pointing (repairing the mortar between the bricks), roof and elevator repairs are also expensive. Other significant problems include a need for upgrading the plumbing (pipes eventually become clogged by deposits from the water and need replacement), upgrades of the electrical system, boiler replacements and significant cosmetic upgrades. Minutes of board meetings, financial reports, and conversations with board members, selling agents, and the sponsor can all reveal important facts about these issues.

What To Do If There Are Problems

In both existing buildings and newly constructed buildings, purchasers must make a distinction between a purchase from a sponsor versus a resale. When purchasing from an individual or company upon a resale, the offering plan may not have current or accurate disclosure about the condition of the building or there may be no offering plan available. This is not a violation of any law or regulation. If the sale is made by an individual unit owner or company, rather than the sponsor, the sale is not regulated by the Attorney General and no offering plan is required. If you purchased your unit from an individual or company and there are problems, the terms of your contract and applicable laws will control your rights. You may wish to consult an attorney.

If you purchased from the sponsor, the first step should be to review the offering plan to determine whether the problem was disclosed. If adequate disclosure of a material defect was not made, you should contact the sponsor or selling agent, describe your problem and allow an opportunity for correction. When efforts to get the sponsor to correct defects are unsuccessful, written complaints can be made to the Office of the Attorney General, with a copy sent to the sponsor. Such complaints are most potent and effective when the complaints of all the unit owners in a development are assembled into one complaint. The complaint letter should spell out in detail the conditions that are claimed to be defective and/or the manner in which the offering plan differs from what was delivered.

Although the Office of the Attorney General cannot represent individuals in complaints against a sponsor or take enforcement action on every meritorious complaint, the Real Estate Finance Bureau reviews every complaint it receives, and seeks to address industry patterns, practices and other matters that broadly affect New Yorkers.

An analysis of the physical condition of a major purchase such as a cooperative or condominium can be difficult and technical. You may wish to rely on the services of an engineer and attorney. In any event, you can minimize problems or surprises regarding the physical condition of the unit by carefully reviewing the offering plan and inspecting the property.