



How to Handle a Townhouse Transaction in New York City

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Long before high-rise condominium buildings and co-ops ever existed, the New York City residential market was primarily townhouses. These properties comprise some of the most expensive residential real estate in the city. A fair portion of our townhouses were built in the late 1800s and early 1900s. The fact that these buildings have been around for over a hundred years in many circumstances provides several unique aspects which only relate to townhouses that one must be aware of in order to successfully handle a townhouse transaction.

One of the first things one should do whenever looking at a residential or commercial property is to retrieve the certificate of occupancy (CO) from the NYC Dept. of Buildings' (DOB) website. The CO will tell you the permitted use of the building, the building occupancy and zoning groups. CO laws came into effect in 1938 and the DOB states that if there has been no change in use or additions to a property built prior to 1938, then the building may not have a CO and is not required to have one. With inventory being at record lows, several prospective townhouse buyers are looking at multi-family buildings (primarily 2-4 family), religious institutional buildings and mixed-use buildings to convert to a single-family dwelling. You will need to determine the current use of the building and what it would entail in order to convert it to a single-family dwelling.

One other interesting property type which people are acquiring to convert to townhouses are single-room occupancy buildings (otherwise known as SROs). SROs were common in the late 1800s and early 1900s and primarily located in parts of Harlem and Brooklyn. SROs were brought into use to provide housing for laborers who lived out of the city and state and gave them a place to live during the work week. These buildings are made up of bedrooms which are rented with bathrooms and kitchens which are shared by the tenants. Several SRO properties look identical to a townhouse and thus why people are seeking to convert them.

In order to declassify the building from SRO status, one must to make an application for a "Certificate of Non-Harassment." This application is submitted to the NYC Department of Housing Preservation and Development (HPD). The purpose of the application is for HPD to ensure that any current or former tenants of the building vacated voluntarily and did not vacate as a result of harassment from the property owner. The difficulty in establishing this to HPD is when tenants refuse to sign an affidavit that they were not harassed or you cannot locate the last tenants of record. Typically the HPD goes back three years in the records to see if there are any outstanding or former harassment complaints. If no complaints have been

logged, it is then up to the applicant to demonstrate to the best of its abilities that the SRO tenants vacated voluntarily.

A benefit of owning a townhouse is that there is no housing association to take into consideration or answer to, such as the case with a co-op or condo board. The negative aspect is that the owner is solely responsible for the condition of the building and its upkeep. Taking that into consideration, it is imperative for any townhouse buyer to have an engineer retained which can conduct an inspection of the property the minute an offer is accepted. The engineer's inspection must take place prior to a buyer signing a contract as it is customary for New York City contracts to require buyers to take title in the "as is" condition of the property at the time the contract is signed.

Although there is no housing association, some townhome alterations are subject to landmark approval in the event that the townhouse has landmark status or is within a landmark district. Landmark regulations may prevent an owner from completing alterations to the property including but not limited to increasing the height of the building.

Attention must also be paid to party wall agreements. Since many townhomes share a common wall with the neighboring building, it is important to review any agreements of record as to the maintenance and repair of this common wall.

In the event that a purchaser is financing the purchase with a mortgage, and even in transactions where the purchaser is not financing, the violations against the property must be removed by the seller or the purchaser will be required to accept the property subject to these violations. Unlike in a co-op or condo where the managing agent will issue an indemnity to a mortgage lender regarding open violations, a lender will not accept same from a seller of the property and these violations are not covered as part of a standard title insurance policy.

When considering purchasing a townhouse, it would be in a purchaser's best interest to not only consult with an attorney, but also with an engineer, architect, and mortgage lender to provide the purchaser with the information that must be considered since a townhouse purchase is, in many ways, different from a co-op or condo. ■

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