

Small Promises



Buyers need to read the fine print of the offering plan before they sign

THE PET PROVISION in the contract for a condominium development in Washington, D.C., stated that owners were allowed one domestic pet, including a gorilla. “The developer’s lawyer threw in the part about the gorilla because he knew that nobody ever reads the fine print,” says Benny L. Kass, a Washington attorney.

Navigating condo-offering plans—the voluminous, descriptive documents that developers present to prospective buyers when they first market their residences—is an arduous task that many buyers would rather skip, but doing so can be costly, says Kass. These plans state the terms and conditions of the sale and list important information such as square footage, floor plans, estimated common expenses, building materials, types of appliances and information about public spaces. “Bottom line: Anyone who signs a contract and puts down \$70,000 sight-unseen is crazy,” Kass says.

Peter Comitini, vice president at Corcoran Group in Manhattan, agrees. “All buyers should have a good real estate attorney. Once you are in a contract that commits you to the deal, your down payment may be at risk if you cannot close.” A recent buyer who Comitini was working with looked at 25 homes before falling in love with a property in Manhattan’s financial district. “After consulting with a mortgage broker, we determined that the mid- to high-\$700,000 range was going to be his limit, and this property was \$790,000,” says Comitini. The sales representative for the property told them that the projected delivery date would be four to six months, but the purchase agreement stated 18 months with no mortgage contingency. “That proved too risky for the buyer’s circumstances, as a rise of less than a percentage point over a possible 18-month waiting period

might mean that he would not be able to get his financing. His \$80,000 deposit would be at risk.”

Patience is part of the deal for buyers who purchase homes in new condo developments. They can spend up to two years imagining themselves entertaining in the modern kitchen with the Miele, Viking and Sub-Zero appliances or sipping cocktails on the 1,000-square-foot deck with views of the ocean. So what happens when buyers move in and not everything is as it should be? “You should always have a walk through of the property prior to closing,” says Comitini. “If something is critically wrong, you can postpone the closing and discuss it with counsel, otherwise it is customary to create a punch list of items that need to be addressed and signed off on by all parties.”

No party wants to delay a closing because it costs money, explains Comitini, but sometimes it’s unavoidable. “I had a situation with a customer where during the walk through there were no floors laid and many finishing details were missing. We adjourned the closing and got the sponsor to deliver the property a week later.” Missing square footage was a problem for Kass’ client in Washington. “The morning of the closing, when she drove her Cadillac into the garage, one-third of the car was left sticking out,” he says. “She measured and found that the garage that was supposed to be 12 feet long was only 8 feet.” The developer explained that the garage had to be shortened due to fire department regulations, and then he made her an offer. “He said, ‘Give me the car and I’ll buy you a new, shorter Cadillac that will fit.’ She agreed. That developer was smart.”

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