

# VIVALDI REAL ESTATE COMPLETE INVESTMENT GUIDE

This invaluable tool gives you all the information you will need to purchase property in New York

- ✓ SIGNING OF CONTRACT OF SALE
- ✓ PAYMENT OF DEPOSIT
- ✓ PRESENTATION OF THE BUYER TO THE CONDOMINIUM
- ✓ TITLE INSURANCE
- ✓ OWNERSHIP STRUCTURE
- ✓ CLOSING AND DEED

## SIGNING THE CONTRACT OF SALE

Once you choose an apartment and have reached a verbal agreement on the purchase price, the true purchase process begins. In the State of New York, the sale of a property goes through several phases. The signing of **Contract of Sale** is the first of these.

The purpose of the Contract of Sale is to outline the obligations of both parties entering an agreement to buy or sell property. In practice in the Contract of Sale, the seller undertakes to transfer the property to the buyer and the latter undertakes to pay the agreed price to the seller. Please note, only once the Contract of Sale is signed by both the seller and buyer are parties legally bound to each other.

Before signing this document the parties may terminate, without risking any consequences, any prior promise made or agreement reached. For this reason, if the buyer does not want to take any chances of seeing the deal fade, it is important not to spend too much time between reaching an agreement with the counterparty and the signing of the Contract of Sale--especially if you have just agreed to an advantageous price for the property.

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The Contract of Sale is a detailed account of all the aspects of the purchase/sale: cost, timing, method of payment, guarantees given to the purchaser and any probable deal making/deal breaking conditions such as the ability to obtain a mortgage. At this point, it is normal and highly advisable to be assisted by a trustworthy attorney. Besides negotiating the terms of the Contract of Sale prepared by the seller’s attorney, the buyer’s attorney will also verify the authenticity of the documentation produced by the seller.

Specifically, he/she will study the **Offering Plan** (or else, the official document describing the property from both a legal and technical/architectural standpoint), originally filed with the Attorney General by the general contractor, which contains documents proving the habitability of the property, its subdivisions and its actual size. The attorney will also verify the exact amount of the **Common Charges** (condominium expenses) and **Real Estate Taxes** (property taxes).

### *PAYMENT OF DEPOSIT*

The signing of the **Contract of Sale** is usually accompanied the buyer’s deposit of 10% of the agreed upon purchase price. The attorney has an additional and important role in protecting the buyer’s investment. This **10% deposit** is not given to the seller but is placed in an Escrow Account (Trust Account) managed by his lawyer who will turn over this 10% amount to the seller only when the deed of change of ownership is produced—that is, only if the purchase has gone smoothly. In practice, the placement of money in an escrow account managed by an attorney enables the buyer to quickly and safely recover the sum paid if the sale fails to take place.

The correct use of the funds in the trust account is guaranteed and supervised by the respected New York City Bar Association. Although embezzlement cases are very rare (a lawyer who does not behave properly with a client's money will lose his/her license to practice and risk severe criminal penalties), always hire a lawyer who has a good reputation and is based in New York City. Do not skimp on hiring the right lawyer – find someone with experience in New York real estate. We suggest that our clients ask their banks for referrals to reliable lawyers. We are also willing to recommend professionals we have worked with over the years, many of whom are multi-lingual.

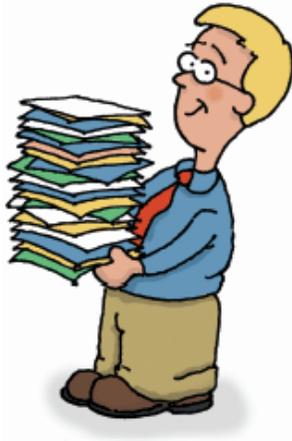
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Once he/she signs the Contract of Sale, the seller cannot turn back. He/she is legally obligated to transfer ownership of the property to the buyer. For his/her part, the buyer may lose his/her deposit if he/she fails to come up with the balance of the purchase price within the time agreed in the Contract of Sale.

## *PRESENTATION OF THE BUYER TO THE CONDOMINIUM*



Unless you are buying directly from the contractor, the next phase upon signing the Contract of Sale is the buyer's submission of an **Application to the Condominium**. With the Application, the buyer asks for a waiver (Waiver) to the right of first refusal (Right of First Refusal) on the apartment he/she wants to buy. In fact, all buildings have a legal right of first refusal on sales within the condominium. To grant the waiver of that right, aspiring condominium owners are asked to complete a questionnaire (which we will assist you in completing in the easiest and fastest way). They are also asked to produce certain documents containing personal information such as tax returns and references from

neighbors, friends or relatives (it seems incredible but this is how it is). This rule exists to prevent the arrival of a new neighbor, who might be undesirable, to purchase an apartment in one's building. This should be no cause for concern, however because the right of first refusal, although it exists in theory, is never exercised.

Although it is simply an annoying formality, the information required to obtain the Waiver should be provided with diligence otherwise one cannot proceed to the transfer of ownership. The aspiring buyer's documentation is presented to the Condominium's Board which meets to vote on waiving the right of first refusal. This phase, which can take some time (especially in summer) can go from two to five weeks.

Many of the documents required for the application can also be useful if the buyer intends to obtain a mortgage from a bank to finance the purchase of the property.

## TITLE INSURANCE

Before completing the purchase process, the buyer will have to verify the correctness of the title and the absence of any claims on it. The full ownership of the insurance product sold and the absence of mortgages, taxes or other claims is obtained by purchasing Title Insurance in the United States.

Title Insurance is prepared by a leading insurance company. It guarantees the buyer the full amount of the purchase price against the risk of eviction. With this system, the buyer gets a double guarantee: On the one hand, the Title Insurance certifies full ownership of the property on the part of the seller and the freedom of the same debt, mortgages or other encumbrances that may last even after the purchase; on the other hand, Title Insurance operates as a standard insurance contract by which the issuing company is obligated to pay the buyer if irregularities not uncovered in their search should emerge in the future.

The cost of Title Insurance is regulated by individual states and in Upstate New York varies between 0.50% and 0.75% of the purchase price (and is proportionately more expensive for buildings of lesser value). Again, it is your attorney's responsibility to obtain Title Insurance for you.

## OWNERSHIP STRUCTURE

Before completing the purchase, you should decide whether you wish to purchase the property in your own name, through a company or in the name of a third party. In general, the alternatives are:

- Purchase in your own name or in a Joint Tenancy with or without an accretion to a Right of Survivorship )
- Purchase of bare property and separate from use (Life Estate)
- Purchase through an LLC (Limited Liability Company)

- Purchase through a Corporation
- Purchase through a property fund or Real Estate Investment Trusts (REITs)

This is an important choice which involves balancing interests, taxes and administrative costs. It is absolutely necessary to obtain legal advice from one's lawyer and/or American accountant on this.

Vivaldi Real Estate provides its area-registered clients with a series of confidential documents which, without claiming to substitute for legal or tax advice, can help the buyer get an idea of the alternatives available to him/her.

## CLOSING AND DEED

The last step in buying a property is the Transfer of the Deed (transfer of title) from the seller to the buyer. Once the Waiver is released and the research done by the Title Insurance does not reveal any irregularities or facts stated by the seller, the buyer will transfer the remaining 90% of the purchase price to the trust account managed by his/her lawyer. At this point, the lawyer will go to the seller's lawyer's office along with the representative from the company issuing the Title Insurance and using the funds transferred by the buyer, will pay the balance due. In exchange for the agreed upon price, the attorney receives the title of ownership (Deed) that the insurance company, in coordination with the lawyer, will record with the local authorities thus ensuring the buyer full ownership of the property.

It is not necessary for the buyer to be present at the closing. He/she may delegate the completion of this task to his/her attorney. Powers of Attorney can be issued and sent from most foreign countries to New York using the services of notaries at U.S. consulates abroad.



## TAXES AND INVESTMENT RELATED COSTS

### TAXES

- Transfer Tax
- Mansion Tax
- Real Estate Tax
- Income Tax
- Capital Gains Tax
- Mortgage Recording Tax
- Estate Tax

### BUYING EXPENSES

- Legal Fees
- Title Insurance
- Broker's Fee
- Processing Fee

### SELLING EXPENSES

- Legal Fees
- Broker's Fee
- Broker's Fee
- FIRPTA

### MAINTENANCE EXPENSES

- Common Charges
- Management
- Tax Return
- Insurance
- Gratuities

## TAXES

Listed below we explain the real estate taxes imposed in New York on a purchase made by an individual. If the purchase is being made through a company, the amounts may vary depending on the case. There are five types of taxes normally imposed upon real estate investment in New York:

a) **Transfer Tax** - The transfer fee (similar to the registration tax) is paid by the buyer only when the seller is a contractor or developer and it is a first subdivision. The federal, state and

## Taxes

Listed below are the various real estate taxes imposed on a purchase made by an individual New York City as well as expenses incurred in Buying, Selling and Maintenance.

local transfer tax for preowned apartments is approximately 1.85% of the purchase price and due from the seller at closing.

b) **Mansion Tax** - The luxury tax (an estate tax) is due when the property changing hands is selling at a price equal to or above one million dollars. The amount is equal to 1% of the sale price and is payable by the buyer at closing.

c) **Real Estate Tax** - The property tax is a local tax paid semi-annually by the property owner. The amount varies depending on the size of the apartment, the luxuriousness of the building and the building's location in the city. Some buildings where many elderly tenants live have lower real estate taxes relative to their category but the average real estate taxes in a luxury building range from \$90-120/sq meter/year.

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*IMPORTANT – There is a 10-year tax abatement in many new construction or totally renovated buildings. Initially, the property taxes are extremely low and increase gradually over the ten years that the building benefits from the tax abatement. One can learn immediately what the property taxes would be without the abatement and then predict what they would amount to once the ten years have passed. This is very important information because nearly all buildings that initially have tax abatements have very high taxes in the end. The initial property tax amount and system is an important tool for evaluating the intrinsic value of the apartment and its profitability.*

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d) **Income Tax** - Income tax is paid annually only on the property's income deducted from the gross income (rent):

- all interest expenses;
- a depreciation of 3.7% /year of purchase price for the first 27 years,
- local taxes;
- all management expenses, including
  - ✓ common charges;
  - ✓ administrative and management costs;
  - ✓ repairs
  - ✓ any telephone charges, travel, legal, advertising;

In general, the sum of all the deductions makes the taxable income very low if not zero. On this (if any), one pays taxes on income ranging from 28% to 37%. In Italy, the law requires that taxable profit, calculated according to U.S. tax law, and generally very limited, be declared in the tax return along with any taxes already paid in the U.S.

e) **Capital Gains Tax** - The capital gains tax is calculated by adding all purchase expenses

including legal fees, probable renovation, full property insurance, reasonable expenses related to the purchase (such as air travel and hotel during the search phase) and then depreciation used is deducted.

On the capital gains computed above, there is a federal tax of 15% for individuals and 28% for corporations plus other state and local taxes that are about 14% of the capital gains tax.

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*IMPORTANT – It is possible to avoid payment of the Capital Gains Tax using the so-called Like Kind Exchange 1031 by buying another similar property anywhere in the U.S. similar to the one sold and not of less value. The payment of the tax is postponed to the next sale. This opportunity can be used more than once over time.*

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In addition to the taxes listed above, one must also consider the following taxes that occur only under specific conditions:

f) **Mortgage Recording Tax** - The registration tax for the mortgage loan and equal to 2.8% of the loan amount. By law, mortgage loans can be repaid at any time without a penalty.

g) **Estate Tax** - The estate tax is very high for non-resident aliens, and it is therefore so important to plan this well with your attorney. As indicated previously, Vivaldi Real Estate provides its registered customers with a series of confidential documents and private information which, without claiming to offer legal or tax advice, can still help the buyer to form an idea of the available alternatives.

## *BUYING EXPENSES*

The following additional expenses should be added to the purchase price:

a) **Legal Fees** - The legal fees for the purchase of a property typically range from \$3000 to \$5000, depending on the legal work requested. For buildings under construction or newly constructed buildings, legal fees may increase because of the special attention that must be given to the Contract of Sale and the Offering Plan.

If you buy through a company (Corporation, Inc., Limited Liability Company) you must prepare to spend an additional \$4000 unless there are complex shareholder agreements, for which the

amount may increase by many thousands of dollars.

b) **Title Insurance** - The title insurance is issued by a leading insurance company that guarantees the full ownership, the absence of liens, mortgages, and any encumbrances not declared on the property sold. If problems arise, the insurance will assume the responsibility to correct or, if this is not possible, reimburse the purchaser to indemnify the full amount paid. Title Insurance is not a compulsory expenditure, but it is strongly recommended. The cost of Title Insurance varies between 0.50% and 0.75% of the purchase price of the property.

c) **Broker's Fee** - The agency commission is paid by the seller. The sale price already includes their commission, therefore is never an additional cost to the buyer. This is true even if the purchaser is assisted by his own consultant (the Buyer's Broker). If more brokers are involved in the sale and only the seller's broker loses, the seller and the broker have to share the commission with the buyer's broker according to New York State law. For properties other than apartments (entire buildings and offices), buyer and seller pay their respective brokers separately. The fees in this case vary between 1% and 3% of the purchase price, depending on the value of the property.

d) **Processing Fee** - Administrative costs for obtaining a waiver of the right of first refusal in the condominium vary greatly depending on the luxuriousness of the building. In general, the total cost is around \$1,000 and is paid only upon transfer of ownership.

## SELLING EXPENSES

The buyer should consider having to deduct the following costs from the purchase price

a) **Legal Fees** - Legal fees depend on the work required. They are generally lower than the costs incurred to purchase (see above).

b) **Broker's Fee** - The agency fee usually amounts to 6% of the purchase price. Almost all apartments in Manhattan are sold through brokers appointed by the sellers.

c) **FIRPTA** – The state requires foreigners to make a deposit of 10% of the purchase price to guarantee the payment of taxes due. The amount will be returned after a few months once the authorities have completed the necessary checks. In many cases, the lawyer can see to it that the buyer avoids paying this deposit.

## MAINTENANCE EXPENSES

d) **Common Charges** - These are always paid by the condominium owner. The amount varies depending on the services of the building (many buildings have recreation rooms, gyms, swimming pools, saunas etc.). Normally common charges include heating, hot water, concierges, insurance for common structures, etc. These are amounts that can be as high as \$10/sq meter per month.

e) **Management** - The management of the apartment includes all activities and the resolution of problems pertaining to the owner. If the owner does not reside in New York, he may choose to avail himself of the service of the many management companies in Manhattan.

**Vivaldi Real Estate** also provides exclusive management services for its customers, i.e. those who bought apartments through Vivaldi Real Estate. The standard management service offered by Vivaldi Real Estate costs \$250 per month and includes:

- payment of all expenses
- research and verification of tenants' credentials
- rent collection
- the expertise to solve various types of problems.

A detailed list management expenses program offered by Vivaldi Real Estate is available in the “**Services**” section of its website.

f) **Tax Return** - The income tax statement made through an accountant costs \$500/year if the owner of the property is an individual, \$3000/year if it is a corporation.

g) **Insurance** – Homeowners Insurance (Fire & Liability) costs between \$500-\$1000/year.

h) **Gratuities** - Tips to concierges/porters at Christmas time are traditional. Although it is a social obligation and not a legal one, in Manhattan it is very important to maintain a good relationship with the staff.

## PRACTICAL CASE, A SAMPLE PURCHASE

### EXAMPLE OF A CONTRACT OF SALE, COMPLETE WITH COSTS FOR BUYER AND SELLER

The following apartment was recently purchased in a residential area of Midtown Manhattan. It consists of a kitchen, living room, 2 bedrooms, 2 baths plus half bath for a total of 1463sf. This is a late 80s luxury high rise building with a view of Central Park and prestigious services: restaurant, gym, pool, meeting room & 24-hour doorman.

	%*	AMOUNT	RESPONSIBILITY OF		NOTES
			BUYER	SELLER	
				R	

