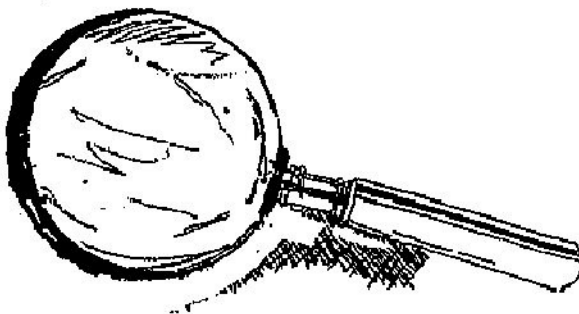


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## More About Pre-Closing Inspections



### Getting Ready for Closing

For those of you who have survived the process of finding an apartment, negotiating the contract, obtaining financing and getting the myriad of players involved to agree to a closing date, there is still one step left before closing--the pre-closing inspection or "*walk through*". Most co-op and condo contracts give the buyer the right to inspect the apartment at reasonable times and within 48 hours prior to closing.

Buyers want the right to inspect the apartment from time to time prior to closing so that they can have their architect or designer take measurements and have contractors look at the space before renovation contracts are signed. Most contracts provide that the buyer will accept the condition of the apartment at closing as existed on the date of the contract. Accordingly, an inspection immediately prior to closing is necessary to insure that you get what you bargained for.

### Who Should Inspect the Apartment?

The world is divided into two kinds of people: those of us who can and do fix things and those of us who hire people to fix things. For those of us who simply don't have

a clue about plumbing, water damage, buckling floors, inoperative electrical outlets, heating and cooling systems, light fixtures and whatever else might be going on in your particular apartment, consideration should be given to having someone do the "walk through" with you who will be able to spot potential problems with the condition of the apartment. In most cases, the walk through is performed by the soon-to-be new owner and by the brokers. The vast majority of the time, a walk through with the brokers will be sufficient to identify whether there have been any changes to the apartment since the date that the contract was signed. Here's a good rule of thumb: If you have been satisfied with the performance of your real estate broker throughout the purchase process, you can rely on your broker to assist you with the walk through. If your broker has been ineffective during the purchase process, make sure that someone other than your broker assists you with the walk through.

### **Special Situations**

There are situations where having a professional (such as an architect, engineer or contractor) accompany you on the walk through makes good sense. Here are a few:

- *New Construction.* If you are buying an apartment that has just been built, and there is a contractual obligation for you to complete a "[Punch List](#)", it is recommended that you have a professional assist you with the walk through. In most new condos (there are almost no new co-ops), where you are buying a brand new apartment, there will inevitably be minor items that will have to be completed after closing. These items are identified immediately prior to closing and are listed on the punch list that is then attached to the contract. The punch list is delivered at the Closing and signed off by both the sponsor and the buyer. There are numerous items that the average buyer will miss without the assistance of a professional who can see past the fresh paint (assuming the sponsor is obligated to paint the walls, which is not always the case). If items are not brought to the sponsor's attention on the punch list, it is doubtful that the sponsor will address these items after closing. The best person to help you with this type of inspection is probably a contractor who has experience with residential construction or renovation. Contractors practically live on job sites and know what to look for when an apartment is nearing completion.
- *Repairs By Seller.* If your seller has been obligated to make repairs to the apartment, it is essential that a professional assist you with the walk

through. For example, if prior to closing, a leak has occurred in the apartment and the floors were damaged, you must determine whether the leak has been repaired in all respects and whether the floors have been properly repaired or replaced.

- *Environmental Issues.* Unfortunately, from time to time, serious mold conditions can develop from water damage. If a mold condition is discovered in your proposed apartment, it is essential that environmental professionals determine whether the problem has been eliminated.

- *Mechanical Systems.* If repairs are required to any mechanical system in the apartment, the walk through must be conducted with a professional knowledgeable in that specialty. Plumbing, electrical or HVAC repairs or replacements may require NYC Building Department "sign offs". Accordingly, it is important to have the situation handled by a licensed contractor who makes such repairs as a part of his or her everyday work. Don't use Uncle Phil to confirm that the blown electrical circuit is now functioning properly.

### **What to Look For**

If the circumstances don't require professional assistance during the walk through, here are some suggestions as to what to look for during your inspection:

- Make sure to test all appliances, air conditioning or heating units, plumbing fixtures and light fixtures.

- If the apartment has hardwood floors, make sure that the floors were not damaged when the seller moved his or her possessions out.

- The apartment should be delivered "broom clean and vacant of all tenancies". If the seller has done an inadequate job of cleaning the apartment before closing, an adjustment should be made at closing to reimburse you for the cost of hiring someone to clean the apartment prior

to the time you move in

- Seller's can have a funny habit of leaving stuff that they don't want and taking stuff they were supposed to leave. The seller should be obligated to remove any unwanted personal property as soon as possible after the closing. Items that should have been left in the apartment but were removed must be adjusted for at closing.
- New York City is awash in water leaks. Make sure you check all floors, ceilings and walls for any evidence of water damage.

### **What to do if there's a Problem**

There are three kinds of problems that can occur at closing time:

- A minor problem that can be worked out at closing.
- A major problem that may or may not be able to be worked out at closing.
- A problem that is not discovered until after closing.

### **The Minor Problem**

When a minor problem occurs, the usual result is that the parties will reach an economic understanding as to the value of the problem. Scratches on the floor, an air conditioner that died, a removed towel rack, a previously unseen imperfection--these are items that the seller and buyer can resolve by the seller "ponying up" some bucks at the closing table. In the vast majority of cases, this type of financial settlement will suffice to make the problem go away. In some cases, an escrow of funds (held by one of the attorneys) will be agreed to, until the seller fulfils some obligation, like getting his junk out of the apartment within a stated period of time. Again, these situations usually get resolved and everyone walks away relatively comfortable with the result.

### **The Major Problem**

When a major problem occurs, more caution is required in finding an adequate remedy for the buyer. If a serious water leak occurs prior to closing, or if there is fire damage or some other material change in the condition of the apartment, the parties must work out a more significant escrow of funds to insure that the problem will be fixed by seller within a reasonable time. The financial terms of the arrangement have to be significant enough so that the seller has incentive to get the work done. When a real problem arises, the buyer often prefers to do the work rather than have the seller take care of the problem. As long as the buyer and the buyer's attorney are satisfied with that result, the closing can be completed. If the nature of the problem is so serious that the physical integrity of the apartment is in question, or if the buyer just isn't getting what the buyer bargained for (like a subtenant who is refusing to move out) it may be necessary or prudent to adjourn the closing. Adjournments occur every now and then, but are the exception and not the rule. Most issues get resolved at the closing table.

### **The Undisclosed Problem**

Sometimes the seller fails to disclose a problem prior to closing and the buyer finds out about the unwanted condition after he or she moves in. What should a buyer do in such a situation? A buyer should always consult with his or her attorney if an undisclosed negative condition is discovered after the closing. Each situation is different and must be evaluated on its own. Analysis of the seller's liability for an undisclosed problem can get technical and review of the particular contract of sale is required. Standard form coop contracts tend to give buyer's a bigger window to go back to the seller with problems. Even then, chasing the seller is always difficult and costly. If the cost of rectifying the condition costs less than a new flat screen (let's say \$1,000.00), it's probably just not worth the time, effort and cost to potentially make your seller do the right thing. That decision is obviously up to you.

### **Residential Reality: See You at the Closing**

One of the first questions that the seller's attorney usually asks at the start of the closing is "*How did the walk through go?*" Invariably, the answer is "*Fine*". In almost all cases, the buyer will get what he or she bargained for when the contract of sale was executed. As long as you put as much effort into completing the transaction as you did in finding the apartment, everything should work out as anticipated. Flush the toilets, run the dishwasher, flip the light switches. You're almost home.

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