

The Weidenbaum & Harari, LLP TimeLine Series:

Cooperative Closings: The Board Approval Process

The board approval process is one of the key stages in the purchase/sale of a cooperative, occurring shortly after execution of the contract of sale. The sellers of a cooperative unit generally have some experience with the board approval process, having gone through the process themselves at some point. Buyers may not have a similar experience to draw upon. This article discusses the board approval process in a typical cooperative transaction. It should be emphasized that every cooperative board operates slightly differently. In addition, while there are several standard clauses that deal with the board approval contingency, such a clause is nevertheless subject to negotiation between the parties, and an attorney should be consulted regarding any specific transaction.

Many contracts contain a board approval contingency clause. This renders the contract of sale “subject to” the consent of the Corporation. If the consent is not given, then the contract is terminated and the buyers receive the return of their down payment without penalty. If, on the other hand, consent of the Corporation is granted, the buyers must proceed with the purchase of the property. Buyers typically have a number of hurdles to jump in order to properly comply with the board approval requirements. Buyers must proceed in good faith to promptly (i) complete the Corporation’s application and provide all reasonable documentation and references requested by the Corporation supporting the application; (ii) pay all applicable fees and charges ordinarily imposed by the Corporation on the applicants; (iii) attend one or more personal interviews as requested by the Corporation.

Buyers may find themselves in breach of the Contract of Sale for failing to comply with such requirements. This can happen where a buyer fails to submit the board application promptly (often the contract requires a completed application to be submitted within a certain specified timeframe, such as within 10 days of receipt of the signed contract of sale, or within 3 days of the receipt of a loan commitment letter or the deadline to obtain a loan commitment letter). While such a timeframe may seem easily attainable, submissions are often delayed during the process of collecting financial information from various sources, whether by the sheer volume of information requested in the application process, securing letters of recommendation, or collection of other documents required by the board. A buyer may also be in breach for failing to provide all the reasonably necessary follow up documents, such as income verification, employment references, or for failing to attend a scheduled board interview. If a broker is involved in the transaction, this is an area where an experienced broker will provide useful guidance and assistance. Buyers are encouraged to contact the broker to discuss the board approval process in further detail.

One note of caution: the board approval contingency clause in many contracts will only be satisfied, and a buyer required to proceed with the purchase, where the Corporation grants unconditional consent to the buyer. Often a Corporation, in an effort to protect its financial interests in what it may deem a potentially risky transaction, will impose a condition on a prospective buyer, such as a requirement that the buyer place the equivalent of several months’ maintenance payments in an escrow account held by the Corporation. Unfortunately, these conditions may only be made explicit to the prospective buyer during the interview process. Buyers are therefore cautioned not to commit to any conditions that may be presented by the Corporation without first discussing the matter with his or her attorney.

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