

**New York Lawyers'
Practical Skills Series**

Real Estate Transactions— Residential Property

Kenneth M. Schwartz, Esq.
Claire Samuelson Meadow, Esq.

2018–2019

NEW YORK STATE BAR ASSOCIATION



New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2018
New York State Bar Association
All rights reserved
ISBN: 978-1-57969-545-3
Product Number: 421409

CONTENTS

I.	Introduction	1
II.	Precontract Matters Retainer Letter.....	1
	A. Gramm-Leach-Bliley Act.....	2
	B. Relations With Real Estate Brokers	2
III.	Counseling the Client Regarding Financing.....	3
	A. Financing	3
	1. Types of Financing	3
	2. FHA Loans	4
	3. VA Loans.....	4
	4. SONYMA (State of New York Mortgage Agency)	4
	5. Conventional Loans	4
	a. Fixed-Period ARM	5
	b. Two-Step Mortgage	5
	c. Convertible ARM	5
	d. Graduated-Payment Mortgage	5
	e. Buy-Down Mortgage	5
	6. Seller Financing	6
	B. The Application	6
	C. Underwriting.....	7
	1. Collateral	7
	2. Capacity	7
	3. Credit Reputation.....	8
	D. Loan Documents.....	9
	1. The Note	9
	2. The Mortgage	9
	3. Initial Escrow Statement.....	9
	4. Affidavits	9
	5. Private Mortgage Insurance (PMI)/Mortgage Insurance Premium (MIP)	9
	6. Regulation Z/Truth in Lending Act	10
	7. Effects of the Dodd-Frank Wall St. Reform and Consumer Protection Act ..	12
	E. Subprime Home Loans and High-Interest-Rate Home Loans.....	16
IV.	The Contract	17
	A. Inspections and Environmental Concerns	18
	1. Asbestos.....	19
	2. Radon.....	19
	3. Lead-Based Paint.....	19
	4. Mold.....	20
	5. Other Inspections	21
	6. Environmental Risks of Underground Heating Oil Storage Tanks	21
	7. Termite Inspection	23
	B. Form of Ownership to Be Reflected in Contract and Deed.....	23
	1. Tenancy by the Entirety.....	23
	2. Joint Tenancy.....	24
	3. Tenants in Common.....	24

4.	Same-Sex Marriages.....	24
5.	<i>Inter Vivos</i> Trust as Property Transferee.....	25
6.	Community Property Rights.....	25
C.	Standard Contract Provisions and Requirements.....	26
1.	Names and Mailing Addresses of the Parties.....	26
2.	Dating the Contract.....	26
3.	Description of the Property to Be Conveyed.....	26
4.	Consideration (Sales Price).....	26
5.	Maintenance of the Contract Deposit.....	27
6.	“Subject to” Provisions.....	28
7.	Type of Deed.....	29
8.	Quality of Title.....	29
9.	Mortgage Contingency.....	30
10.	Attorney Review Contingency.....	30
11.	Personal Property.....	30
12.	Notice and Form of Delivery.....	31
13.	Risk of Loss.....	31
14.	Home Equity Theft Prevention.....	31
15.	Possession.....	35
16.	Closing.....	35
17.	Signatures.....	35
V.	Special Contract Considerations—Capacity of the Parties.....	35
A.	Infants.....	35
B.	Incapacitated Persons.....	36
C.	Estates.....	36
D.	Trusts.....	36
E.	Powers of Attorney.....	37
F.	Corporations.....	39
1.	Religious Corporations.....	39
2.	Not-for-Profit Corporations (NPC).....	39
3.	For-Profit Corporations.....	40
G.	Partnerships.....	41
H.	Limited Liability Companies.....	41
I.	Parties in Bankruptcy.....	42
VI.	Property Condition Disclosure Statement.....	43
VII.	New Home Construction Contracts.....	44
A.	General.....	44
B.	Down Payment.....	45
C.	Implied Warranty.....	46
VIII.	Condominium Units.....	46
A.	Condominium Defined.....	46
B.	Newly Constructed or Unsold Condominium Units.....	47
C.	Resale of a Condominium Unit.....	48
D.	Legal Issues Regarding Condominiums.....	48

	1. Issue of Joint and Several Liability of Board of Managers, Individual Condo Unit Owners and Individual Board Members	48
	2. Judicial Intervention Versus Laissez Faire “Business Judgment Rule”	49
	3. Quality of Life Issues—Implementing Smoke-Free Policy in Condominium Buildings.....	49
	4. Quality of Life Issues—Policies Concerning Comfort Pets	51
IX.	Cooperative Apartments	52
	A. Cooperative Defined.....	52
	B. Cooperative Contract.....	52
	C. Form of Ownership to Be Reflected in Cooperative Apartment Sales Contract, on Stock Certificate and Proprietary Lease	53
	D. Offering Plan and Related Cooperative Corporation Documents	53
	E. Maintenance Charges and Special Assessments	54
	F. Financing of Acquisition of Shares in a Cooperative Corporation	54
X.	The Abstract of Title Versus Title Insurance	55
	A. The Abstract of Title	55
	B. Title Insurance	56
	C. Title Insurance Policies	57
XI.	Surveys	62
XII.	Preparing for Closing	63
	A. The Mortgage Commitment	63
	B. Preparation of Documents	64
	1. Deed.....	64
	2. TP-584	65
	3. TP-584.1	66
	4. RP-5217-PDF	67
	C. Affidavits.....	67
	D. FIRPTA	68
	E. Occupancy Agreements.....	69
	F. Basic Rules for Exemption From Gain and Reporting of Gain—IRS Form 1099-S.....	69
	1. General Provisions of Internal Revenue Code (IRC) § 121	69
	2. Reporting Gross Sales of Real Estate Transactions (IRC § 6045(e)) Not Qualifying for § 121 Exemption.....	70
	G. Ordering Mortgage Payoff Letters	72
	H. Purchase Money Financing Documents	73
	I. Mortgage Tax Considerations	73
	J. Closing Statement.....	73
XIII.	The Closing	75
	A. Preparation.....	75
	B. Special Issues Arising at Closing	76
	1. Cash or Currency of \$10,000 or More.....	76
	2. Title Clearance Matters Requiring an Escrow	77
XIV.	Recording of Documents.....	77
	A. Electronic Recording	77
	B. ACRIS	78

C.	PREP.....	80
XV.	Post-Closing	81
XVI.	Star Program.....	81
	Residential Real Estate Forms Index	85
	Table of Authorities	619
	About the Authors.....	625

KENNETH M. SCHWARTZ, ESQ.

Mr. Schwartz is a Senior Attorney with the firm of Sciocchetti & Abbott, PLLC in Latham, New York and was formerly a principal of Farer & Schwartz, P.C. and was formerly a principal of Worldwide Abstract Services, Inc. A graduate of Capital University School of Law, Mr. Schwartz is a member of the New York State and Albany County Bar Associations, the New York State Title Attorney Bar Association; and the Professional Abstractors Association of Upstate New York. He has lectured on topics such as residential real estate and contracts, title examination and title insurance issues, boundary line disputes for the NYSBA, New York State Land Title Association, Albany County Bar Association, New York State Legislature and Executive Staff, Lorman Educational Services, and National Business Institute. He authored the chapter "Residential Real Estate Practice" in NYSBA's *Pitfalls of Practice*.

CLAIRE SAMUELSON MEADOW, ESQ.*

While in the private practice of law, Ms. Meadow concentrated in real property transactions. She authored numerous real estate articles and appeared on the General Practice "Hot Tips" panel at the New York State Bar Association's Annual Meeting. She presented Continuing Legal Education credit programs on real estate and title matters at Pace Law School as well as to the Westchester Women's Bar Association, the Westchester County Bar Association, the New York County Bar Association and the National Law Foundation. Ms. Meadow authored the residential real property text and forms of the *New York Lawyer's Deskbook* and *Formbook* for more than 10 years.

Before entering private practice, she was a staff attorney in the Enforcement Division of the Securities and Exchange Commission's New York regional office. She was a Phi Beta Kappa, *cum laude*, graduate of Hunter College, Class of 1959, and a graduate of Columbia Law School, Class of 1962, where she was a recipient of a Moot Court scholarship.

She was listed in *Who's Who in American Women* and *Who's Who in American Law*. She was a 1989 recipient of a Westchester County Woman of Achievement Award and a Certificate of Special Congressional Recognition from Congresswoman Nita M. Lowey for "outstanding and invaluable service to the community."

A founding member of the New York State Women's Bar Association, Westchester County. Ms. Meadow was its first recording secretary and created its annual golf outing, which she chaired for six years.

* Deceased Jan. 9, 2016