

Practical Skills – Purchases and Sales of Homes

Supplemental Materials

New York City

Practical Skills – Purchases and Sales of Homes – Spring 2015

**NEW YORK CITY
SUPPLEMENTAL HANDOUTS**

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Annotated by Karl B. Hottel

RESIDENTIAL CONTRACT OF SALE

Jointly Prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association. (11/00)

CONSULT YOUR LAWYER BEFORE SIGNING THIS CONTRACT.

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION. This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

WARNING: PLAIN LANGUAGE. No representation is made that this form of contract for the sale and purchase of real estate complies with Section 5-702 of the General Obligations Law ("Plain Language").

CONTRACT OF SALE made as of between

Address:

Social Security Number/Fed. I. D. No(s): hereinafter called "Seller" and

Address:

Social Security Number/Fed. I. D. No(s): hereinafter called "Purchaser."

The parties hereby agree as follows:

1. Premises. Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A," annexed hereto and made a part hereof and also known as:

Street Address: New York

Tax Map Designation:

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. Personal Property. This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, chandeliers, bathroom and kitchen cabinets and counters, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flagpole, pumps, shrubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in microwave oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below. (strike out inapplicable items).

Excluded from this sale are furniture and household furnishings and

3. **Purchase Price.** The purchase price is payable as follows:

\$

(a) on the signing of this contract, by Purchaser's good check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"):

\$ 6

(b) by allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed:

\$ 7

(c) by a purchase money note and mortgage from Purchaser to Seller:

\$ 8

(d) balance at Closing in accordance with paragraph 7:

\$ 0.00

4. ⁹ **Existing Mortgage.** (*Delete if inapplicable*) If this sale is subject to an existing mortgage as indicated in paragraph 3(b) above:

(a) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of _____ percent per annum, in monthly installments of \$ _____ which include principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on _____

(b) To the extent that any required payments are made on the existing mortgage between the date hereof and Closing which reduce the unpaid principal amount thereof below the amount shown in paragraph 3(b), then the balance of the price payable at Closing under paragraph 3(d) shall be increased by the amount of the payments of principal. Seller represents and warrants that the amount shown in paragraph 3(b) is substantially correct and agrees that only payments required by the existing mortgage will be made between the date hereof and Closing.

¹⁰ (c) If there is a mortgagee escrow account, Seller shall assign it to Purchaser, if it can be assigned, and in that case Purchaser shall pay the amount in the escrow account to Seller at Closing.

(d) Seller shall deliver to Purchaser at Closing a certificate dated not more than 30 days before Closing signed by the holder of the existing mortgage, in form for recording, certifying the amount of the unpaid principal, the date to which interest has been paid and the amounts, if any, claimed to be unpaid for principal and interest, itemizing the same. Seller shall pay the fees for recording such certificate. If the holder of the existing mortgage is a bank or other institution as defined in Section 274-a of the Real Property Law it may, instead of the certificate, furnish a letter signed by a duly authorized officer, employee or agent, dated not more than 30 days before Closing, containing the same information.

¹¹ (e) Seller represents and warrants that (i) Seller has delivered to Purchaser true and complete copies of the existing mortgage, the note secured thereby and any extensions and modifications thereof, (ii) the existing mortgage is not now, and at the time of Closing will not be, in default, and (iii) the existing mortgage does not contain any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the sale or conveyance of the Premises.

5. **Purchase Money Mortgage.** (*Delete if inapplicable*) If there is to be a purchase money mortgage as indicated in paragraph 3(c) above:

(a) The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached or, if not, in the standard form adopted by the New York State Land Title Association. Purchaser shall pay at Closing the mortgage recording tax, recording fees and the attorney's fees in the amount of \$ ¹² _____ for its preparation.

(b) The purchase money note and mortgage shall also provide that it is subject and subordinate to the lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, provided that (i) the interest rate thereof shall not be greater than ¹³ _____ percent per annum and the total debt service thereunder shall not be greater than \$ _____ per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.

6. **Downpayment in Escrow.** (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at ¹⁴ _____ Address:

until Closing or sooner termination of this contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in a(n) _____ interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of

objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that, Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

(e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.

(f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

7. **Acceptable Funds.** All money payable under this contract, unless otherwise specified, shall be paid by:

(a) Cash, but not over \$1,000.00;

(15) (b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior notice (by telephone or otherwise) to Purchaser;

(c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$ (16) ; and

(d) As otherwise agreed to in writing by Seller or Seller's attorney.

(17) **8. Mortgage Commitment Contingency.** (Delete paragraph if inapplicable. For explanation, see Notes on Mortgage Commitment Contingency Clause.)

(a) The obligation of Purchaser to purchase under this contract is conditioned upon issuance, on or before _____ days after a fully executed copy of this contract is given to Purchaser or Purchaser's attorney in the manner set forth in paragraph 25 or subparagraph 8(j) (the "Commitment Date"), of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, of \$ _____ for a term of at least _____ years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms (the "Commitment"). To the extent a Commitment is conditioned on the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met; however, a commitment conditioned on the Institutional Lender's approval of an appraisal shall not be deemed a "Commitment" hereunder until an appraisal is approved (and if that does not occur before the Commitment Date, Purchaser may cancel under subparagraph 8(e) unless the Commitment Date is extended). Purchaser's obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the lender fails or refuses to fund the loan for any reason.

(b) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth in subparagraph 8(a) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof.

(18) (c) (Delete this subparagraph if inapplicable) Prompt submission by Purchaser of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the

terms and conditions set forth in subparagraph 8(b)(i), provided that such Mortgage Broker promptly submits such application to such Institutional Lender(s). Purchaser shall cooperate in good faith with such Mortgage Broker to obtain a Commitment from such Institutional Lender(s).

(d) If all Institutional Lenders to whom applications were made deny such applications in writing prior to the Commitment Date, Purchaser may cancel this contract by giving Notice thereof to Seller, with a copy of such denials, provided that Purchaser has complied with all its obligations under this paragraph 8.

(e) If no Commitment is issued by the Institutional Lender on or before the Commitment Date, then, unless Purchaser has accepted a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), Purchaser may cancel this contract by giving Notice to Seller within 5 business days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.

(f) If this contract is canceled by Purchaser pursuant to subparagraphs 8(d) or (e), neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27.

(g) If Purchaser fails to give timely Notice of cancellation or if Purchaser accepts a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph 8.

20 (h) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may cancel this contract by giving Notice to Purchaser within 5 business days after the Commitment Date, which cancellation shall become effective unless Purchaser delivers a copy of such commitment to Seller within 10 business days after the Commitment Date. After such cancellation neither party shall have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except as set forth in paragraph 27.

(i) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any other state; foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.

(j) For purposes of subparagraph 8(a), Purchaser shall be deemed to have been given a fully executed copy of this contract on the third business day following the date of ordinary or regular mailing, postage prepaid.

9. Permitted Exceptions. The Premises are sold and shall be conveyed subject to:

- 21 (a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
- 22 (b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;
- 23 (c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
- (d) Real estate taxes that are a lien, but are not yet due and payable; and
- (e) The other matters, if any, including a survey exception, set forth in a Rider attached. 24 25

26 **10. Governmental Violations and Orders.** (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.

(b) (Delete if inapplicable) All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.

27 **11. Seller's Representations.** (a) Seller represents and warrants to Purchaser that:

- (i) The Premises abut or have a right of access to a public road;
- (ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
- (iii) Seller is not a "foreign person," as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
- (iv) The Premises are not affected by any exemptions or abatements of taxes; and
- (v) Seller has been known by no other name for the past ten years, except 28

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

12. **Condition of Property.** Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of closing (except as otherwise set forth in paragraph 16(e)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

13. **Insurable Title.** Seller shall give and Purchaser shall accept such title as

shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract.

14. **Closing, Deed and Title.** (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

(b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

15. **Closing Date and Place.** Closing shall take place at the office of

at _____ o'clock on _____
Purchaser, at the office of _____

or, upon reasonable notice (by telephone or otherwise) by _____

16. **Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a family dwelling at the date of Closing.

(c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then required by FIRPTA, or a withholding certificate from the I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(d) The delivery of the Premises and all buildings(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.

(e) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the buildings(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

(f) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.

(g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

17. **Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate

State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

44 **18. Apportionments and Other Adjustments; Water Meter and Installment Assessments.** (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

45 (i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and renewals of those expiring prior to Closing; (v) vault charges; (vi) rents as and when collected.

46 (b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

47 (c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

48 (d) If at the date of Closing the premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

49 (e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. Allowance for Unpaid Taxes, etc. Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after Closing, provided that official bills therefor computed to said date are produced at Closing.

20. Use of Purchase Price to Remove Encumbrances. If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient moneys with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

50 **21. Title Examination; Seller's Inability to Convey; Limitations of Liability.** (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

51 (b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

52 (c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless

cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

53 **23. Defaults and Remedies.** (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

54 (b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

55 **24. Purchaser's Lien.** All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. Notices. Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or

56 (c) with respect to ¶7(b) or ¶20, sent by fax to the party's attorney. Each Notice by fax shall be deemed given when transmission is confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries. This contract may be delivered as provided above or by ordinary mail.

26. No Assignment. This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

27. Broker. Seller and Purchaser each represents and warrants to the other that it has not dealt with any real estate broker in connection with this sale other than **57**

("Broker") and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

58 **28. Miscellaneous.** (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

(c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

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NOTES ON MODEL MORTGAGE COMMITMENT CONTINGENCY CLAUSE for RESIDENTIAL CONTRACT OF SALE

1. WARNING: the mortgage commitment contingency clause for the Residential Contract of Sale is a bar association form that attempts to provide a mechanism that makes the rights and obligations of the parties clear in sales of residences in ordinary circumstances. It should be reviewed carefully by Seller and Purchaser and their attorneys in each and every transaction to make sure that all the provisions are appropriate for that transaction. Negotiated modifications should be made whenever necessary.
2. Under the clause, the obligation of Purchaser to purchase under the contract of sale is contingent on Purchaser's obtaining a mortgage commitment letter from an Institutional Lender within the number of days specified for the amount specified. This refers to calendar days. Seller's attorney should state his/her calculation of the Commitment Date in the letter delivering the executed contract to Purchaser's attorney, to prevent confusion later. Purchaser should promptly confirm or correct that date. In applying for a loan, Purchaser should inform its lender of the scheduled date of closing in the contract and request that the expiration date of the commitment occur after the scheduled date of closing. Purchaser must comply with deadlines and pursue the application in good faith. The commitment contingency is satisfied by issuance of a commitment in the amount specified on or before the Commitment Date, unless the commitment is conditioned on approval of an appraisal. If the commitment is conditioned on approval of an appraisal and such approval does not occur prior to the Commitment Date, Purchaser should either cancel the contract or obtain an extension of the Commitment Date. If the commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the contract of sale with Seller.
3. If there are loan terms and conditions that are required or would not be acceptable to Purchaser, such as the interest rate, term of the loan, points, fees or a condition requiring sale of the current home, those terms and conditions should be specified in a rider.
4. This clause assumes that initial review and approval of Purchaser's credit will occur before the commitment letter is issued. Purchaser should confirm with the lender that this is the case before applying for the commitment.
5. If, as has been common, the commitment letter itself is conditioned on sale of Purchaser's home or payment of any outstanding debt or no material adverse change in Purchaser's financial condition, such a commitment will satisfy the contract contingency nonetheless, and Purchaser will take the risk of fulfilling those commitment conditions, including forfeiture of the downpayment if Purchaser defaults on its obligation to close. Under New York case law, a defaulting purchaser may not recover any part of the downpayment, and Seller does not have to prove any damages. If Purchaser is not willing to take that risk, the clause must be modified accordingly.
6. Purchaser may submit an application to a registered mortgage broker instead of applying directly to an Institutional Lender.
7. This clause allows Seller to cancel if a commitment is not accepted by Purchaser by the Commitment Date, unless Purchaser timely supplies a copy of the commitment, to allow Seller the option to avoid having to wait until the scheduled date of closing to see if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and settle for forfeiture of the downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This clause means that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that he/she will obtain the Commitment after the Commitment Date. Some Purchasers may not want to be subject to such cancellation by Seller.
8. Purchaser may want to add to paragraph 22 that Purchaser's reimbursement should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller willfully defaults under the contract of sale [alternative: if Seller is unable to transfer title under the contract of sale].

Joint Committee on the Mortgage Contingency Clause: Real Property Section of the New York State Bar Association; Real Property Law Committee of the Association of the Bar of the City of New York; Real Property Committee of the New York County Lawyers Association.

Sample Seller's Rider Form for RPLS Purchases and Sales of Homes
[for educational purposes]

RIDER TO 2000 NYSBA RESIDENTIAL CONTRACT OF SALE

Dated as of _____, 20__
between

_____, Seller, and

_____, Purchaser

Premises: _____

Seller and Purchaser hereby agree as follows:

To the extent that there may be any conflict or inconsistency between the terms and provisions of this Rider and the printed form of Contract of Sale to which this Rider is annexed (such Contract of Sale and this Rider together being sometimes herein called the "Contract"), the terms and provisions of this Rider shall govern.

29. Permitted Exceptions. Supplementing Paragraph 9 of the Contract, the Premises are sold and shall be conveyed subject to the following matters (collectively, the "Permitted Exceptions"):

- a) Covenants, restrictions, reservations and easements of record and utility easements whether or not of record, if any [**Purchaser should add: “, provided they do not prohibit existing structures at the Premises or their use as a single family home;”**]
- b) Possible projections and encroachments of retaining walls, hedges, walls, fences, garages, sheds, patios, decks, steps, landings, stoops, cornices, coping and trim, driveways, ramps, walkways, cellar doors, chutes, plantings, sprinkler systems and pumps, or similar structures and installations (all of the foregoing individually and collectively referred to as “minor encroachments”) and variations among record lines, the tax map and minor encroachments;
- c) State of facts shown on survey dated ____ by _____ and any additional facts a personal inspection or such survey brought down to date would show [**Purchaser should add: “, provided such additional facts do not render title unmarketable;”**]
- d) [add exceptions listed in Seller’s title insurance policy and easements, etc. from deed to Seller]

30. No Action to Cure Title Defects. Supplementing Paragraph 21 of the Contract, Seller shall not be obligated or required to bring any action or proceeding to render title marketable or insurable or to spend more than \$ ____ to cure a Defect (other than a mortgage placed on

the property by or for the benefit of Seller), and any action taken by Seller to remove any Defect shall not be deemed an admission on Seller's part that Seller is obligated to remove same or that such Defect is one which would give Purchaser the right to cancel the Contract. If Seller is unable to remove such Defects as hereinabove provided, Purchaser shall have the right to waive any such Defects, and in such event the parties hereto shall proceed to Closing without any abatement in the purchase price in excess of \$_____.

31. Condition of Premises. Supplementing Paragraph 12 of the Contract, Purchaser acknowledges that Purchaser is not relying on any representations or statements, oral or written, made by Seller, any broker or any other person as to the condition of any heating system, air conditioning system, septic system, water supply, or roof, as to which Purchaser shall make his/her own inspection. [**Alternatively, par. 32:**]

32. Condition of Premises. Supplementing Paragraph 12 of the Contract, Purchaser is purchasing the Premises in its "AS IS" condition on the date hereof, **with all faults.** Between the date hereof and Closing, the Premises will be subject to use, wear and tear, loss of trees, erosion and other deterioration, for which the Purchaser shall have no claim against Seller or any rights by reason thereof. Purchaser represents and warrants to Seller that Purchaser has made full examination and investigation of the Premises and related information before entering into this Contract, and that in entering into this Contract Purchaser has not been induced by, and has not relied upon any representations, covenants, warranties or statements, whether oral or written or expressed or implied, made by Seller (except as otherwise specifically set forth herein) or by any real estate broker or any other person representing or purporting to represent Seller, concerning the Premises, its state of title, condition or state of repair, income, rents, expenses, operations, environmental condition, the presence or absence of any materials, including but not limited to formaldehyde insulation or hazardous building materials, radon, asbestos, insecticides or pesticides of any kind and/or nature, hazardous waste (as same may be defined under any statutes, ordinances, local laws, rules or regulations of any municipal agency having jurisdiction over the Premises) wetlands (as same may be defined under any statutes, ordinances, local laws, rules or regulations of any municipal agency having jurisdiction over the Premises) or any other substance or material, paint containing lead or any other additives, the condition of any fuel oil or gasoline storage tanks which may now or heretofore have been located at the Premises, or the impact thereon if located on adjacent properties, infestation of any insects or pests, description of the Premises, including the size, area or dimensions of the lot, its value, the cost of operating or maintaining the Premises, the physical condition of the Premises, the operation or use to which the Premises may be applied, development rights, landmark or historic designation, subdivision, school district or the zoning thereof, soil bearing capacity, elevations, insurability, access to public roads, the character, quality, legal use, availability of water, electric, sewer, telephone or public utilities of any kind, the subsurface conditions of the Premises, the suitability of the soil or subsurface conditions for any use to which the Purchaser may wish to utilize the subject Premises, availability of tax benefits, abatements or exemptions or any other matter or thing affecting or relating to the Premises. Purchaser shall have no claim against Seller for Seller's failure to make any representations, covenants, warranties or statements covering the foregoing.

33. Governmental Violations and Orders. Supplementing Paragraph 10 of the Contract, if the cost of removal of violations or notices of violations [**and obligations pursuant to the Administrative Code of the City of New York**] required to be removed by Seller shall be in excess of \$ _____, Seller may cancel the Contract, in which event Seller shall refund to Purchaser the sums set forth in Paragraph 21(c) of the Contract, whereupon the Contract shall terminate without further liability from either party to the other, unless Purchaser shall agree to take title subject to such matters and assume the performance thereof by giving Seller written notice within ___ days following Seller's written notice of cancellation, and thereupon Purchaser shall receive an abatement of the purchase price in the reasonably estimated cost to remove such matters, but in no event more than \$ _____. **Seller shall comply with violations, etc. as of the date of Closing. [? not customary in NYC]**

34. Adjustments and Apportionments. Supplementing Paragraph 18 of the Contract, for the purpose of making such apportionments, apportionments shall be made on the basis of a 365 day year for the actual number of days elapsed and calculated as of midnight of the day preceding the Closing. Any assessment installment due subsequent to the Closing Date shall be assumed by Purchaser. [If any taxes or other governmental charges are changed after the Closing, any affected apportionments shall be promptly adjusted, which obligation shall survive the Closing.] **[? could leave apportionments subject to adjustment for a long time]** Charges for any transferable service contracts that Purchaser has agreed to accept shall be apportioned as of the Closing.

35. Time of the Essence. Supplementing Paragraph 15 of the Contract, Purchaser may adjourn Closing for up to ten (10) days and the date of Closing specified in the Contract or any such adjourned date shall be TIME OF THE ESSENCE for the fulfillment of Purchaser's obligations under the Contract.

36. Lead Warning Statement and Lead Based Paint Provision. Purchaser acknowledges receipt of an Environmental Protection Agency approved lead hazard information pamphlet. Purchaser further acknowledges that it is aware that any residential dwelling that was built prior to 1978 may present exposure to lead from lead-based paint. Purchaser acknowledges that it is aware that the Premises were or might have been built prior to 1978 and is waiving the opportunity to conduct a risk assessment or inspection.

37. Truth In Heating Law. Under New York Energy Law Section 17-103, commonly known as "Truth in Heating Law", Purchaser has the right to a summary of the heating and/or cooling bills or a complete set of said bills relating to the Premises and information concerning the insulation in the Premises. Purchaser expressly waives the right to insulation, heating and cooling information and copies or a summary of any of said bills as to which Purchaser may be entitled and does not request them in connection with this transaction.

38. Checks. (a) Purchaser hereby unconditionally guarantees the payment of all checks delivered by or for the account of Purchaser at Closing in payment of the purchase price, apportionments or otherwise, whether such checks are issued by Purchaser, the lending institution issuing the mortgage, lender's attorneys (from special, trust, mortgage, escrow or other accounts) or any other source. Purchaser waives presentment, protest, notice of

protest and any other notice to which the Purchaser may be entitled. **[This guaranty shall include of all Seller's collection expenses, including reasonable attorney's fees, and shall survive termination of the Contract and delivery of the deed.]**

(b) If the check given as the Downpayment on the Contract is dishonored for any reason by the bank upon which it is drawn, other than for bank error, then Seller, in addition to any other rights or remedies Seller may have, may, at Seller's sole option, terminate the Contract, and thereupon Seller shall be relieved of all obligations under the Contract, including but not limited to liability for all brokerage commissions, for which Purchaser shall indemnify and defend Seller.

39. Certificate of Occupancy. Nothing contained in the Contract shall be construed to require Seller to seek or obtain a variance or change of zone or, to make any alteration or modification to the Premises or spend any sum in order to obtain such Certificate of Occupancy or other certificate and in no event shall Seller be required to spend in excess of \$ ____ to obtain any Certificate of Occupancy or other certificate for the buildings or other improvements as presently exist. If any variance or change of zone proceedings or any modification or alteration to the Premises is required by the municipality as a condition precedent to the issuance of said Certificate of Occupancy or other certificate, Seller shall have the option of terminating the Contract and returning the Downpayment hereunder. Purchaser shall, however, have the right of accepting the Premises without such Certificate of Occupancy or other certificate, by giving Seller written notice within in __ days following Seller's written notice of Seller's refusal to provide such certificate without any abatement in the purchase price, and thereupon Purchaser shall receive an abatement of the purchase price equal to the reasonably estimated cost to obtain such certificate, but in no event more than \$ _____. Purchaser shall make application for a copy of the Certificate of Occupancy and other certificates together with its application for a title report. If the municipality or municipal agency in connection with any application requires an updated survey for a Certificate of Occupancy or other certificate, Purchaser shall obtain and supply such updated survey to Seller, at the sole cost and expense of Purchaser. [Note: some municipalities require an inspection of the Premises before issuing a certificate of occupancy to a prospective buyer or lender. In such cases, Purchaser should add: "Seller shall permit the Premises to be inspected by any governmental agency requiring such inspections as a condition to issuing a certificate."]

40. Repairs/Alterations. Notwithstanding anything to the contrary contained in the Contract, Seller shall not be obligated to make any repairs or alterations to the Premises or expend any moneys in connection with Purchaser's mortgage application.

41. Purchaser's Mortgage Financing Representations. Purchaser represents that Purchaser knows of no reason why Purchaser's credit is insufficient to warrant the granting of a Commitment in accordance with Paragraph 8 and that Purchaser has no judgments and/or tax warrants against Purchaser, nor has Purchaser ever been adjudicated as bankrupt (including, but not limited to, a filing under Chapters 7, 10 or 13 of the Bankruptcy Code). Purchaser represents that Purchaser's annual income is sufficient to qualify for the Commitment. In addition, Purchaser represents that Purchaser has sufficient funds to pay the balance of the purchase price, plus adjustments, and monies to

timely pay all Commitment and closing expenses. Purchaser makes the foregoing representations knowing that Seller is relying on the truthfulness of these representations and is entering into the Contract based upon the accuracy of these representations.

42. Mortgage Contingency. Supplementing Paragraph 8 of the Contract, if Purchaser obtains a Commitment in an amount less than provided for herein, Seller shall have the option, by giving written notice within ___ days of receipt of Purchaser's Commitment, of either canceling the Contract or of reducing the sales price in an amount equal to the difference between the Commitment issued and that required hereinabove, in which event the Contract shall be deemed firm and unconditional with respect to the mortgage contingency set forth in Paragraph 8. If Purchaser fails to obtain a Commitment in the amount provided for herein, Seller shall have the option of providing such financing by means of a purchase money note and mortgage.

43. Smoke Detector and Carbon Monoxide Affidavit. Supplementing Paragraph 16(f) of the Contract, Seller shall provide at Closing an affidavit stating that at the time of transfer of the Premises there is installed in the dwelling an operable single station smoke detecting alarm device in accordance with Section 375(5) of the Executive Law and an operable carbon monoxide detector in accordance with Section 378(5)(a) of the Executive Law.

44. Affirmative Insurance. Anything herein to the contrary notwithstanding, any judgments, mortgage liens, other encumbrances, encroachments or any other Defects may be, and shall be deemed satisfied upon Seller depositing with the title company funds sufficient to satisfy same in full, together with the cost of recording the satisfaction instrument(s) and/or causing a title company to affirmatively insure title to the Premises that are the subject of the Contract.

45. Property Condition Disclosure Act. Purchaser hereby acknowledges the disclosure requirements of the Property Condition Disclosure Act, Real Property Law Article 14, and represents that Purchaser has had an opportunity to make an independent examination and inspection of the Premises. Purchaser also hereby waives, releases, and discharges all rights, claims, and actions against Seller and against the Premises arising out of, under or in connection with the Property Condition Disclosure Act and Purchaser's sole right and remedy under or pursuant to the Property Condition Disclosure Act shall be the receipt of a Five Hundred Dollar (\$500.00) credit at Closing.

46. Seller's Attorney's Travel Fee. Supplementing Paragraph 15 of the Contract, if the Closing takes place at a location other than (a) the office of Seller's attorney or (b) an office of Purchaser's lender located in the county where the office of the Seller's attorney is located, Purchaser shall pay Seller's attorney a travel fee of \$___ [\$400?].

47. Electric Service, Utility Surcharge and Uncapped Natural Gas Wells Disclosures. **[check if applicable:]** No electric service is provided to the premises. The premises are subject to electric, gas or water utility surcharges: type/purpose _____; amount _____; payable (monthly, yearly or other) _____. Uncapped natural gas wells are situated on the premises.

48. Agricultural District Disclosure. [**if located partially in an agricultural district:**] It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law.

49. Notices. Supplementing Paragraph 25 of the Contract, any notice may be sent by fax or by email.

50. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument. Use of a facsimile, email or other electronic medium shall have the same force and effect as an original signature.

51. Effectiveness of Contract. Submission by the Seller of this Contract for execution by the Purchaser shall confer no rights, nor impose any obligations on either Seller or Purchaser, unless and until both Seller and Purchaser shall have executed this Contract and executed originals thereof shall have been delivered to the attorneys for the respective parties.

Seller:

Purchaser:

Sample Purchaser's Rider Form for RPLS Purchases and Sales of Homes
[for educational purposes]

RIDER TO 2000 NYSBA RESIDENTIAL CONTRACT OF SALE

Dated as of _____, 20__

between

_____, Seller, and

_____, Purchaser

Premises: _____

Seller and Purchaser hereby agree as follows:

To the extent that there may be any conflict or inconsistency between the terms and provisions of this Additional Rider and the printed form of the Contract of Sale and/or the Rider thereto (such Contract of Sale, Rider and Additional Rider, together, being called the "Contract"), the terms and provisions of this Additional Rider shall govern.

29. Representations. Supplementing Paragraph 11(a) of the Contract, the following additional representations and warranties on the part of Seller are true as of the date hereof and shall be true in all respects as of the Closing Date:

(vii) The Premises are not subject to any violation of governmental laws, rules, regulations or limitations nor any violations of any restrictive covenant, agreement or condition subject to which title is to be conveyed hereunder; and

(viii) Seller has not given consent for the erection of any structures on, under or above any streets, as described in Paragraph 9(b) of the Contract; and

(ix) Seller has no knowledge of any unpaid, pending or contemplated assessment for public improvements or otherwise that may affect the Premises; and

(x) There have not been any oil spills affecting the Premises and [the underground oil storage tank at the Premises has not previously leaked and is presently not leaking] or [there are no underground storage tanks at the Premises]; and

(xi) The roof and any cellar and/or basement are watertight and free of leaks;

(xii) The premises are located in school district: _____.

(xiii) [add any prior oral or written statements upon which Purchaser is relying]

[Seller may want to limit all reps to Seller's knowledge] [The representations and warranties set forth herein shall survive Closing for one year.] [Seller will want to delete survival as not customary]

30. Warranties and Guaranties. To the extent that any warranties, guaranties and/or service contracts benefiting the Premises or any fixtures, appliances, systems or equipment therein or thereon presently exist or come into effect prior to the Closing, including, without limitation, with respect to the roof, electric system, mechanical systems, heating system, air conditioning system, sprinkler system and/or burglar alarm system, Seller shall deliver (to the extent in Seller's possession) and assign the same to Purchaser at Closing. The foregoing shall not in any manner limit any representation, warranty or covenant of Seller or any condition of Closing contained in this Contract.

31. Seller's Repairs and Maintenance. Seller agrees to perform all repairs necessary to maintain the Premises in its present condition and all necessary or usual landscaping and other seasonal work from the date hereof to the date of Closing.

32. Cure of Title Defects. Supplementing Paragraph 21 of the Contract, Seller shall be required to take any and all actions and spend all sums necessary to discharge of record the following: (a) all mortgages and other liens encumbering the Premises; (b) any Defect dischargeable by the payment of a liquidated sum which was recorded against the Premises during Seller's ownership of the Premises; and (c) any Defect which is the result of any act or omission of Seller. In addition, Seller shall be obligated to spend up to \$____ [one percent of purchase price?] to cure Defects. If the cost to cure shall exceed that amount, Seller may cancel the Contract, in which event Seller shall pay to Purchaser the sums set forth in Paragraph 21(c) of the Contract, whereupon the Contract shall terminate without further liability from either party to the other, unless Purchaser elects to take title subject thereto and receive an abatement of the purchase price of \$_____.

33. Purchaser's Inspection. Supplementing Paragraph 12 of the Contract, Purchaser shall have the right to inspect the Premises within the period of 48 hours prior Closing. In addition, Purchaser or its designee shall have the right to enter into and upon the Premises for the purpose of inspections and measurement prior to Closing, from time to time, at reasonable times and upon reasonable notice.

34. Contingent on Inspection Satisfactory to Purchaser. Purchaser's obligation to Close under this Contract is contingent upon inspections **reasonably satisfactory to Purchaser** as to any structural, mechanical, electrical, plumbing, roof covering, chimney, well water flow or quality, oil tank, sewer or septic system defects or the presence of wood destroying organisms or radon ("Condition Defects"). All such inspections shall be completed on or before _____ and at Purchaser's expense, and shall be deemed waived unless Purchaser or Purchaser's attorney shall notify Seller's attorney of Purchaser's election to cancel the Contract due to the unsatisfactoriness of any of them, together with written confirmation by a copy of the inspection results. Upon giving such notice, the Contract shall terminate without further liability from either party to the other and the sums set forth in Paragraph 21(c) of the Contract shall be paid to Purchaser unless, at the option of Purchaser or Seller, such termination may be deferred for a period

of 10 days to provide the parties an opportunity to otherwise agree in writing. **[Abate up to one percent of the purchase price?]** **[Alternatively, par. 35:]**

35. Contingent on Inspections. Purchaser's obligation to Close under this Contract is contingent on all of the following provisions marked with the parties' initials; those marked "NA" shall not apply. Each inspection or test shall be completed at Purchaser's expense within 20 days of the date of this Contract.

 (S) (P) Structural Inspection. Purchaser's obligation to Close under this Contract is contingent upon a determination, by a New York State licensed home inspector, registered architect, or licensed engineer that the premises are free from any substantial structural, mechanical, electrical, plumbing, roof covering, chimney, water or sewer defects. The term "substantial" shall mean any individual repair that would reasonably cost over \$_____ [1500?] to correct.

 (S) (P) Septic System Inspection. Purchaser's obligation to Close under this Contract is contingent upon a test of the septic system servicing the Premises by a licensed professional engineer, licensed plumber, septic system contractor, County Health Department, or other qualified person indicating that the system is in working order.

 (S) (P) Oil Tank Inspection. Purchaser's obligation to Close under this Contract is contingent upon an inspection of the underground fuel oil storage tank and associated piping servicing the Premises by a licensed professional engineer, licensed plumber, heating system contractor, or environmental consultant, indicating that there are no leaks at the Premises.

 (S) (P) Water Potability Test. Purchaser's obligation to Close under this Contract is contingent upon a test of the potable water supply system servicing the Premises by a licensed professional engineer, licensed plumber, County Health Department, or other qualified person indicating that the potable water supply for the Premises complies with applicable County and State Health Department requirements.

 (S) (P) Radon Test. Purchaser's obligation to Close under this Contract is contingent upon a test of the air quality within the Premises indicating that the ambient radon levels do not exceed [4.0] picocuries per liter (the "Radon Limit"). The seller agrees to maintain a "closed house condition" during the test. "Closed-house condition" shall mean that the Seller shall keep the windows closed and minimize the number of times the exterior doors are opened and the time that they are left open. The Seller agrees to comply with all reasonable requirements of the testing service in connection with the test, provided such compliance shall be at no cost to the Seller. If the test reveals that the level of radon gas is four (4) picocuries per liter or higher, the presence of radon gas shall be deemed grounds for cancellation of the contract.

 (S) (P) Wood Destroying Organisms Inspection. Purchaser shall have the right to have the Premises inspected, at its expense, for infestation or damage by termites or other wood destroying insects. If such infestation or damage is found, Purchaser shall mail a copy of the inspection report to Seller's attorney within twenty (20) days from the

date hereof. Upon receipt of such report, Seller may, within twenty (20) days of receipt of such report, either (a) cure such infestation or damage and deliver to Purchaser a one year guarantee at Closing, (b) refuse to cure such condition and give Purchaser a credit at Closing for the cost of such repair, as evidenced by the estimate of a licensed exterminator, or (c) cancel the Contract. Within three (3) business days following receipt of a notice of cancellation by Seller, Purchaser may reinstate this Contract by giving notice to Seller waiving the infestation condition and damage, whereupon Purchaser shall proceed to closing subject thereto without any abatement in the purchase price. Purchaser's failure to give timely notice of any infestation condition or damage, or of Purchaser's waiver thereof, if applicable, shall be deemed a waiver of Purchaser's rights pursuant to this Paragraph, and this Contract shall be enforceable as though this Paragraph were not contained herein.

All such inspections or tests shall be completed on or before _____ and at Purchaser's expense, and shall be deemed waived unless Purchaser or Purchaser's attorney shall notify Seller's attorney of Purchaser's election to cancel the Contract due to the failure of any of them, together with written confirmation by a copy of the inspection results. Upon giving such notice, the Contract shall terminate without further liability from either party to the other and the sums set forth in Paragraph 21(c) of the Contract shall be paid to Purchaser unless, at the option of Purchaser or Seller, such termination may be deferred for a period of 10 days to provide the parties an opportunity to otherwise agree in writing. **[Abate up to one percent of the purchase price?]**

36. Waiver. Notwithstanding anything contained herein, Purchaser may waive any contingency or other condition to this Contract, or any failure by Seller, and Purchaser may elect to take title subject thereto without an abatement in the purchase price.

37. Deviation from NYSBA-Approved Form. Any deviation in an electronically prepared contract from the NYSBA-approved form shall be deemed replaced by the NYSBA-approved form.

38. Escrow. Escrowee shall not charge any fee for acting as escrow agent under this Contract or holding and/or applying the Downpayment in accordance with this Contract.

39. Notices. Supplementing Paragraph 25 of the Contract, any notice may be sent by fax or by email.

40. Smoke Detector and Carbon Monoxide Affidavit. Supplementing Paragraph 16(f) of the Contract, Seller shall provide at Closing an affidavit stating that at the time of transfer of the Premises there is installed in the dwelling an operable single station smoke detecting alarm device in accordance with Section 375(5) of the Executive Law and an operable carbon monoxide detector in accordance with Section 378(5)(a) of the Executive Law.

41. FHA/VA Mortgage. Notwithstanding Paragraph 8 of the Contract, Purchaser may apply for a loan from the Federal Housing Administration (FHA) or the Veteran's Administration (VA). Purchaser shall not be obligated to purchase the premises if the

reasonable value of the property established by the FHA or VA is less than the purchase price, but Purchaser shall have the option to proceed without regard to such valuation.

42. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument. Use of a facsimile, email or other electronic medium shall have the same force and effect as an original signature.

43. Date of Contract. All references in this Contract to the “date of this Contract” shall be deemed to mean the date that Purchaser or Purchaser’s attorney receives a counterpart original thereof signed by Seller.

44. Effectiveness of Contract. This Contract shall not be effective for any purpose unless and until a complete counterpart, signed by the Seller, is delivered to the Purchaser’s attorney.

SELLER:

PURCHASER:

03/19/2014 NYSHPS KBH (BW, DPW, AW)

Addendum to Page 89 of the materials:

A Federal Estate Tax Lien may also be disposed of:

By affidavit that the value of the decedent's estate was lower than the statutory taxable amount for the applicable year. (See Exhibit B)

Year	Effective Exemption	Year	Effective Exemption
2000 and 2001	\$675,000.00	2010	\$5,000,000.00 or \$0 ¹
2002 and 2003	\$1,000,000.00	2011	\$5,000,000.00
2004 and 2005	\$1,500,000.00	2012	\$5,120,000.00
2006 to 2008	\$2,000,000.00	2013	\$5,250,000.00
2009	\$3,500,000.00	2014	\$5,340,000.00
		2015	\$5,430,000.00

II) An Estate Tax Lien in New York State is effective for 15 years from the decedent's date of death. An arms length conveyance by the surviving joint tenant or tenant by the entirety has the same effect as in the case of a Federal Estate Tax lien. The lien attaches to the proceeds.

A New York State Estate Tax Lien can be disposed of:

1. By obtaining and producing for recording at closing, a certificate of discharge² or
2. By conveyance of the surviving joint tenant or tenant by the entirety or
3. By presenting proof of payment (a final receipt from the Department of Taxation and Finance of the State of New York) or
4. By a certificate of no tax due.

As of April 1, 2014 the New York Estate Tax exemption amount increased from \$1,000,000.00 to \$2,062,500 for decedents dying on or after April 1, 2014, the lien of the New York Estate Tax may be passed on satisfactory proof by affidavit establishing said facts.

¹Estates valued at \$5 million or less are exempt from the tax. Estates worth more than \$5 million are taxed at a 35 percent rate or \$0 estate tax exemption/0% estate tax rate coupled with a modified carryover basis.

²Tax law § 982 (c) and (d)

Exhibit B

FEDERAL ESTATE TAX AFFIDAVIT

Title No.

STATE OF NEW YORK :
 : ss.:
COUNTY OF _____ :

_____, being duly sworn, deposes and says:

1. I reside at _____.
2. I am the Executor/Administrator of the Estate of _____ who died a resident of _____ County, on the _____ day of _____, 20____.

If neither of the above, state relationship to decedent: _____.

3. I am fully familiar with the assets of which the decedent died seized, which comprise the gross estate as hereinafter defined, and said gross estate is less than \$_____ and therefore said estate is not subject to any Federal Estate Tax. (See Notes Below)

4. I make this statement knowing full well the Stewart Title Insurance Company relies on the accuracy thereof for the purposes of issuing its policy of title insurance.

Sworn to before me this
_____ day of _____, 20____.

Notary Public

NOTES:

1. *The above affidavit may be used to pass the question of the Federal Estate Tax of a decedent where the gross estate, as hereinafter defined, is less than \$_____.*
2. *Where the gross estate of a decedent is \$_____ or more, the affidavit cannot be used to pass the exception of the Federal Estate Tax. The exception may be passed only upon a Release from the lien of Federal Estate Tax or a closing letter from the IRS and the cancelled checks showing the tax thereon, fully paid.*
3. *The gross estate as used in the above affidavit shall include, wheresoever situate, all real estate, stocks and bonds, mortgages, notes and cash, insurance on decedent's life, jointly owned property, transfers during decedent's life without adequate or full consideration, powers of appointment, annuities, personal property, interests in a partnership or unincorporated business, and the value of the decedent's adjusted lifetime gifts.*

<i>\$600,000 when decedent died during 1987 – 1997</i>
<i>\$625,000 when decedent died during 1998</i>
<i>\$650,000 when decedent died during 1999</i>
<i>\$675,000 when decedent died during 2000 - 2001</i>
<i>\$1,000,000 when decedent died during 2002 – 2003</i>
<i>\$1,500,000 when decedent died during 2004 – 2005</i>
<i>\$2,000,000 when decedent died during 2006 – 2008</i>
<i>\$3,500,000 when decedent died during 2009</i>
<i>\$5,000,000 or zero when decedent died during 2010*</i>
<i>\$5,000,000 when decedent died during 2011</i>
<i>\$5,120,000 when decedent died during 2012</i>
<i>\$5,250,000 when decedent died during 2013</i>
<i>\$5,340,000 when decedent died during 2014</i>
<i>\$5,430,000 when decedent died during 2015</i>

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Tax Act") permits estates of decedents dying in 2010 (after December 31, 2009 and before January 1, 2011) the option to choose between the revived estate tax and the prior Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") tax law. These estates have the option to elect either: (1) the new estate tax, based upon the new 35% maximum rate and the \$5 million exclusion, with a stepped up basis for property in the estate, or (2) no estate tax, and the required application of the modified carryover basis rules under EGTRRA. The presumption is that the estate tax will apply to all estates of decedents who died in 2010. Therefore, executors must affirmatively elect out of the estate tax. The affidavit must identify whether the executor has elected out of the estate tax.

Addendum to Page 452 of the materials:

Authority of Owners and Entities to transfer or encumber the premises:

B) Religious or Not for Profit Corporation:

Not for Profit Corporations seeking to sell, lease, exchange or dispose of all or substantially all of their assets need to seek approval from the attorney general, without the requirement of court approval, however, nonprofits continue to have the right to seek court approval if they so choose.

In addition the sale, mortgage or lease for more than 5 years, by a Religious Corporation requires a Court Order pursuant to section 12 of the Religious Corporation Law and notice to the Attorney General (section 2B RCL)

SURVEYS

MORE THAN JUST A PRETTY PICTURE

Title Surveys and Delivering Marketable Title

New York State Bar Association

May, 2015

Presented By:
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WHAT IS A SURVEY?

Survey means **To Look Over.**

The Process of evaluating real property evidence in order to locate the physical limits of a particular parcel of land.

Education Law §7203. Definition of practice of land surveying

... branch of the engineering profession and applied mathematics which includes the measuring and plotting of the dimensions and areas of any portion of the earth, ...

...for the correct determination, description, conveying and recording thereof

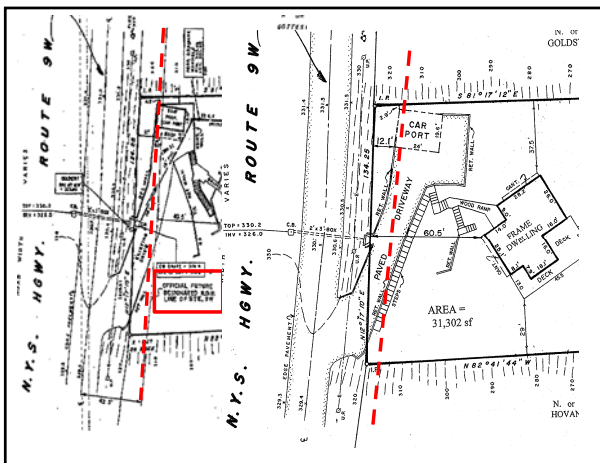
SURVEYORS EXAMINE:

- 1. Physical field conditions**
- 2. Written land records and historical maps**
- 3. Field measurements**

SURVEYOR'S OPINION:

A surveyor forms an opinion concerning the lines of title and physical characteristics of the property.

The opinion is expressed in the form of a map or plat of survey.



WHY ARE SURVEYS NEEDED?

- Prove the existence of the property.
- Establish the relationship of the property to adjoining properties.
- Establish the relationship of the lines of possession to the record lines of title.

SURVEYS AND THE REAL ESTATE CONTRACT



McPherson v. Schade, 3 E.H. Smith 16 (1896)

- Encroachment 5' x 25'
- Buyer not obligated to close
- Every contract of sale implies a marketable title
- Encroachment renders Seller's title unmarketable and Buyer is excused



Subject to any state of facts a survey may show **provided the same does not render title unmarketable.** or

Subject to any state of facts an accurate survey may show **provided the same does not render title unmarketable.**



Subject to any state of facts shown on the [annexed] survey prepared by [Howie Blewitt,] licensed surveyor dated _____ [and last redated _____] and to any additional state of facts an accurate survey or personal inspection of the property would disclose, provided such additional facts do not render title unmarketable.

TYPES OF SURVEYS

1. **Boundary Survey.**
2. **Survey in Possession.**
3. **Topographical Survey.**
4. **Title Survey.**

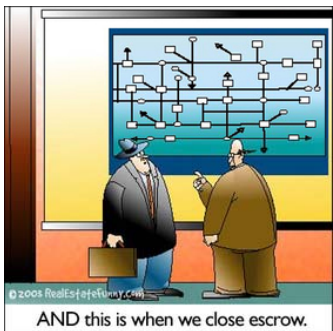
SURVEY STANDARDS

- Determine the standard to which the survey was prepared
- ALTA/ACSM – 2005 Minimum Standard Detail Requirements for Land Title Surveys
- NY State Association of Professional Land Surveyors – Code of Practice for Land Surveys
- NYS Education Department – Land Surveying Practice Guidelines -2000

PRACTICE TIPS

- **Review survey before signing contract.**
- **Use the correct survey clause.**
- **Verify the standard to which the survey map has been prepared.**

SURVEYS AND THE REAL ESTATE CLOSING



ALLOCATION OF LIABILITY FOR SURVEY DEFECTS

Responsibility to Clear Title Exceptions

“If at the date of Closing Seller is unable [due to title defects, to deliver the quality of title required by the contract to be delivered], then, except as hereinafter set forth, Seller shall have the right, at Seller’s sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract”

“Notwithstanding anything contained herein to the contrary, Seller shall be required to remove any Defect(s) to the extent that (i) such matters constitute voluntary mortgages, liens or other encumbrances placed on or recorded against the Premises by Seller or with Seller’s permission, and/or (ii) such matters can be cured by the payment by Seller of a liquidated sum of money.”

ALLOCATION OF LIABILITY FOR SURVEY DEFECTS

Responsibility to Clear Title Exceptions (Cont’d)

“Seller shall be under no obligation to incur any expense in excess of \$_____ to remove any exception to title, nor shall Seller be obligated to bring any lawsuit or court proceeding in order to deliver title in accordance with the terms of this contract, except that Seller shall: (i) cause to be removed of record any lien arising from Seller’s financing; and (ii) discharge all existing mortgages or other voluntary liens allowed by Seller to be placed on the property.”

SURVEY CONDITIONS AFFECTING TITLE

- Encroachments/Projections
- Out of Possession
- Gaps, Gores and Overlaps
- Changed or Missing Improvements

ADVERSE POSSESSION

§ 501. Adverse possession; defined

3. Claim of right. A claim of right means a reasonable basis for the belief that **the property belongs to the adverse possessor or property owner**, as the case may be. Notwithstanding any other provision of this article, claim of right shall not be required if the owner or owners of the real property throughout the statutory period cannot be ascertained in the records of the county clerk, or the register of the county, of the county where such real property is situated, and located by reasonable means.

ADVERSE POSSESSION

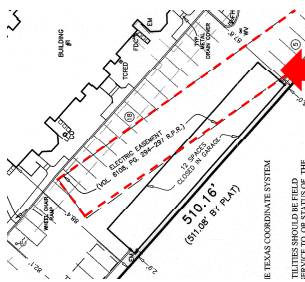
§ 543. Adverse possession; how affected by acts across a boundary line

1. Notwithstanding any other provision of this article, the existence of de minimis non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls, shall be deemed to be permissive and non-adverse.

2. Notwithstanding any other provision of this article, the acts of lawn mowing or similar maintenance across the boundary line of an adjoining landowner's property shall be deemed permissive and non-adverse.

SURVEY CONDITIONS AFFECTING TITLE

Encroachments/Projections



RPAPL § 2001
2. An action... compelling the removal or alteration of a structure, or to recover damages... cannot be maintained unless it is commenced (a) before the expiration of two years from the completion of the structure concerned...

SURVEY CONDITIONS AFFECTING TITLE

Out of Possession



SURVEY CONDITIONS AFFECTING TITLE

Gaps, Gores and Overlaps



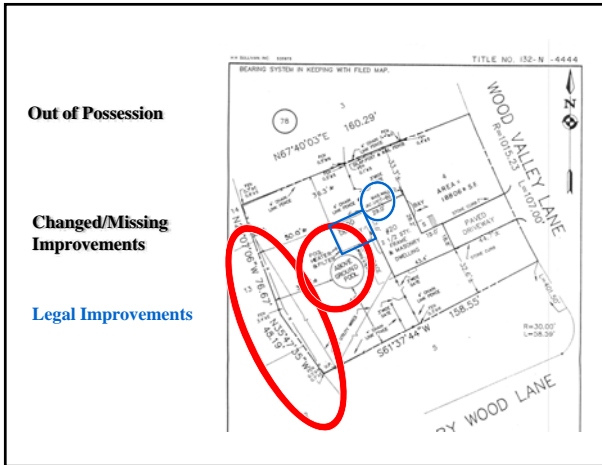
SURVEY CONDITIONS AFFECTING TITLE

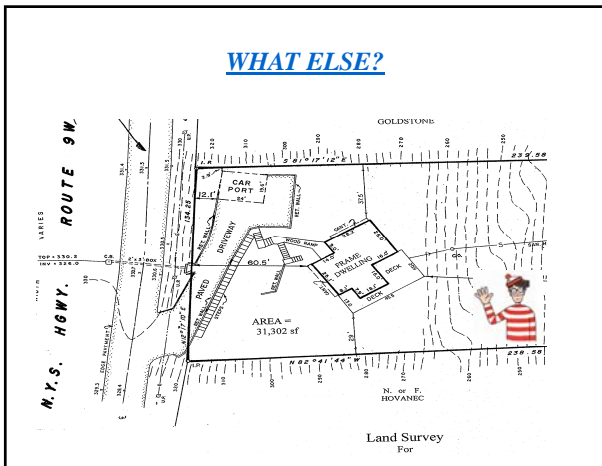
EJECTMENT

Where the encroachment of a wall onto neighboring property is:

- six inches or less, and
- abuts a wall on the neighboring parcel
- limitation period for ejectment is one year
- owner has an additional year to sue for damages, but upon satisfaction of the judgment, it is treated as forced sale and title passes to encroacher
- If no action for ejectment or damages within two years, the encroacher has easement for so long as the wall stands

RPAPL §611(2)





- SURVEYS ARE A DUE-DILIGENCE TOOL**
- Locate all physical improvements.
 - Have there been any alterations made to the property?
 - Is any land, parking or improvement missing?
 - Are there any limitations on the building envelope?
 - Is there room for an extension or appurtenant structure?
 - Are there possible sources of contamination on the property that need to be examined?



*To Identify Unrecorded Easements
and Other Facts Not of Record*

WHAT TO LOOK FOR

- Name, address and telephone number of the surveyor.
- Original signature of the surveyor and the surveyor's seal and registration number.
- Point of beginning and the angles, bearings and distances needed to describe the parcel.
- Discrepancies between the measured parcel and the record description.

WHAT TO LOOK FOR

- A note if the record description fails to form a mathematically closed figure.
- Names and widths of abutting streets (or measured distances over private rights of way to nearest streets).
- All easements, restrictions and covenants of record.
- All physical evidence of the existence of easements, rights of way, pipes, paths and water courses which the surveyor observed.
- References to all maps of record consulted by the surveyor.

WHAT TO LOOK FOR

- The location of all buildings defined by measurements perpendicular to the boundaries, and the dimensions and height of all buildings.
- All watercourses bordering on or running through the property.

WHAT TO LOOK FOR

- All revisions must be noted and dated.
- Surveyor's Certification to
 - Purchaser
 - Lender
 - Purchaser's Title Insurer
 - Purchaser's Counsel

 NEW YORK STATE BAR ASSOCIATION

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MORE THAN JUST A PRETTY PICTURE

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May, 2015

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