

# New York Real Estate Law

Saturday, May 26, 2012

## THE FIRST STEP - SHOULD YOU SIGN A BINDER? (And why it really doesn't matter)

“Should I sign this?”. This is probably the most frequent question that I receive and the very essence of what attorneys do. Actually, the question is better phrased as “What will it mean to me if I sign this document?”. Indeed, an attorney's job is to explain to a client what the consequences are of signing a particular document rather than to advise a client if they should sign such document. That is a business decision of the client. So, what does it mean if you sign a binder? Actually, not much at all.

The following is a typical binder that you may be asked to sign.

The image shows a form titled "BARGAIN & SALE REALTY BINDER". The form includes fields for "Received from Purchaser(s)", "Residing at", "The sum of \$", and "Date". There is also a line for "(Check/Cash) as a deposit on the account of the purchase price of the premises located at".

**BARGAIN & SALE  
REALTY  
BINDER**

Received from Purchaser(s) \_\_\_\_\_ Date \_\_\_\_\_

Residing at \_\_\_\_\_

The sum of \$ \_\_\_\_\_ (Check/Cash) as a deposit on the account of the purchase price of the premises located at \_\_\_\_\_

The deposit is to remain subject to the owner's acceptance of the price and terms contained herein. If the owner fails to accept this offer, then the deposit shall be returned to the Purchaser(s).

T E R M S: Purchase Price: \$ \_\_\_\_\_  
Down Payment on signing of the contract: \$ \_\_\_\_\_  
Cash on delivery of deed: \$ \_\_\_\_\_  
Subject to obtaining first mortgage of: \$ \_\_\_\_\_

Included in this sale are the following items of personal property: \_\_\_\_\_

Purchaser(s) agree(s) to accept the premises subject to the tenancy of: \_\_\_\_\_

If the Offer is accepted, the formal contract shall be signed on or before: \_\_\_\_\_

and the closing shall take place on or about: \_\_\_\_\_

at the office of Purchaser's lending institution or their attorneys. This agreement may not be changed orally after acceptance by both parties. The owner and purchaser recognize Stargen & State Realty, Inc. as the broker who brought about this sale. This binder is further conditioned upon the Owner's disclosure and Purchaser's acknowledgment with respect to Lead-Based Paint/Hazard pursuant to 42 U.S.C. §4852(d).

#### PURCHASER'S AGREEMENT

I, the undersigned, as Purchaser of the premises described above agree to everything set forth herein. If the owner also executes everything set forth herein, I authorize Stargen & State Realty, Inc. to deliver the deed to the owner. I hereby release Stargen & State Realty, Inc. from any liability arising herefrom.

#### OWNER'S AGREEMENT

I, the undersigned, as owner of the premises described above agree to and accept everything set forth herein. As owner of said premises, I acknowledge receipt of the above stated. I agree to pay Stargen & State Realty, Inc. a brokerage fee of \_\_\_\_\_ of the purchase price.

PURCHASER: \_\_\_\_\_ DATE: \_\_\_\_\_

OWNER: \_\_\_\_\_ DATE: \_\_\_\_\_

PURCHASER: \_\_\_\_\_ DATE: \_\_\_\_\_

OWNER: \_\_\_\_\_ DATE: \_\_\_\_\_

ATTORNEY FOR PURCHASER: \_\_\_\_\_

ATTORNEY FOR OWNER: \_\_\_\_\_

TEL NO: \_\_\_\_\_ FAX NO: \_\_\_\_\_

TEL NO: \_\_\_\_\_ FAX NO: \_\_\_\_\_

The word “binder” is really a misnomer as a binder does not serve to bind either the seller or the purchaser. It is simply an initial step in a very long process and it is simply for the parties to convey to each other that they have a rough meeting of the minds and to start the process of negotiating and executing a contract of sale. It is the execution of the contract that is meaningful and by which both parties become bound.

The binder starts out as an offer from a Purchaser and typically contains a rough outline of the transaction - the identity of the parties, the premises being sold, the purchase price, down payment at contract, mortgage amount, approximate closing date, whether the premises will be delivered with tenants, etc. The purchaser will then sign the binder and hope that the Seller countersigns. If the Seller fails to countersign, then it is entirely meaningless and no claim can be made that the seller is bound.

Sometimes the Purchaser will also give what's referred to as a "binder check" when they sign the binder, which is typically anywhere from \$100 to \$1,000. Such binder check is typically not cashed by the seller and is then returned to the Purchaser uncashed at the closing or earlier, if the deal does not proceed.

If the binder is countersigned by the Seller, then it may sure seem like the parties are bound. They simply aren't. Either side can freely walk away without consequence or recourse by the other. Of course, the other side can huff and puff and make idle threats, but they are altogether meaningless.

I recently had a situation where I forwarded a proposed contract of sale to a buyer's attorney and about a month later, the buyer wanted to proceed. Apparently, he was trying to obtain a refund of his down payment from a prior deal and it took far longer than he had anticipated. When he finally could proceed, it was too late as my client had located another purchaser and we were proceeding with him.

The prior buyer became extremely upset and threatened to sue everyone involved with the transaction. The problem was that it was too late. When a proposed contract is forwarded to a buyer's attorney, a seller's attorney should always send along a cover letter which clearly

and unequivocally states that the buyer has a deadline - typically a week - within which to return signed contracts and if the buyer fails to do so, then the proposed contract is deemed a nullity and of no further force and effect. It is also a good idea to mention that any changes to the contract will be deemed a counteroffer and render the contract null and void.

I had forwarded such a cover letter along with my contract and the deadline had long ago expired. The original buyer had no cause of action whatsoever against anyone involved and, as expected, his threats soon quieted down and he disappeared.

Getting back to what a binder is, the point is, it isn't much. It simply means that the parties have a rough framework for a transaction. It is one step beyond a handshake, but light years from a binding contract.

Should you have any questions, please contact us at [\(718\) 803-4113](tel:7188034113) or by email at [SKAFAX@YAHOO.COM](mailto:SKAFAX@YAHOO.COM).

**SUNIL K. AGARWAL, ESQ.**

**NATASHA S. AGARWAL, ESQ.**

Sunil Agarwal at 5/26/2012 10:12:00 AM



### 3 comments:



**Zil** July 26, 2012 at 11:46 PM

Why, it must be my birthday, or somebody's birthday! These informative blogs are gifts of education and an "embarrassment of riches" for this reader.

Binders indeed. It seems that nothing is binding anymore...not even proposals of the heart.

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**NaLimA KaPooR** December 4, 2012 at 2:55 AM

*This comment has been removed by a blog administrator.*

[Reply](#)



**Mahesh Sharma** November 24, 2015 at 2:51 AM

I'm always browsing the real estate listings not even though buying a house is a little out of reach at the moment. This is a gorgeous place, I love the post you have done it.

[Long Island Luxury Homes](#)

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