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Legal Matters®

Be careful if you're buying a condo that's new construction

With the real estate market still in the doldrums, a lot of people are thinking that this is a good opportunity to buy a brand new condominium, rather than one in an older community.

New construction has a lot of advantages – but it can also be more complicated, and there are some potential trouble spots as well. You should definitely speak with your real estate attorney before you sign anything in order to make sure you're protected.

There are three big advantages to new construction:

- ✓ One, everything's new! You get to enjoy a brand-new kitchen, brand-new bathrooms, brand-new appliances, etc. Plus, you can avoid paying for major common-area maintenance items that an older building might need, such as repainting or



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roof repairs.

- ✓ Two, if you buy before construction is completed, you can often have the finish work done to your liking: You can choose paint colors, bathroom tile, kitchen surfaces and so on.
- ✓ Three, you might get a good deal. Developers often need to “pre-sell” a certain percentage of the units in order to complete their construction financing. For that reason, they may be willing to offer very attractive prices to people who buy in early.

On the other hand, there are a lot of things you'll have to worry about that aren't a problem for buyers in more established communities. Here are some things to consider:

- The developer's offering plan will contain the specifications for the unit, including exact size, the standard appli-

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What you need to know if you're hiring an architect



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Hiring an architect to design a home, a commercial building, or a new addition can be very exciting. But there can be some traps for the unwary in the fine print of the contract, and you'll want to have an attorney look it over in order to protect your rights.

Here's just one example: Who owns the architect's drawings and plans? You might assume that you do, since you're paying for them. But one of the most commonly used standard contracts says that the architect, not you, has all ownership rights (including copyrights) in any drawings, plans, or specifications that the architect creates.

What does that mean? It means that if the contract with the architect is terminated for any reason, you have to return all the documents to the architect, and you no longer have a right to use the plans for your building!

There is a provision that says that if the architect is

"adjudged" to be in default, you can go ahead and use the plans – but having an architect "adjudged" to be in default can be very time-consuming and expensive.

This gives an architect tremendous leverage to have you settle any dispute in his or her favor, so that you can continue with the construction.

Instead of signing this standard contract, you might want to insist that the architect's plans will be a "work for hire" – an arrangement that means you will own the plans, not the architect.

Some architects may be reluctant to agree to a "work for hire" arrangement, because they want to be able to legally use similar plans in the future for other clients. In such a case, you might be able to compromise by agreeing that the architect will own the plans, but you'll have an unrestricted right to use them as long as the architect has been paid in full according to the contract.

While pets can cause damage to a building, there's a growing demand for pet-friendly environments, and allowing pets can make a rental property much more attractive to tenants.

More apartment and office buildings are allowing pets

Many landlords – both residential and commercial – have been trying to set themselves apart and attract more tenants by allowing pets.

It's true that pets can cause damage to a building, but it's also true that there's a growing demand for pet-friendly environments, and allowing pets can make a rental property much more attractive.

Some 17 percent of businesses across the U.S. now allow pets at work, according to one recent survey. Most of these are small businesses and traditional stores – such as a bookstore with a cat – but many large companies such as Google and Apple now allow pets in offices, and other businesses are following suit.

If you're a landlord (or a tenant) and you want to have a pet policy, it's best to spell things out in the lease. For instance,

the lease might specify what types of animals are allowed, and require that all pets be healthy, vaccinated, housebroken and well-socialized. A lease might also require that pets be kept on a leash in any common areas. A landlord might want to set aside certain common areas as pet-free zones.

Both landlords and tenants will want to make sure that their insurance policies cover dog bites.

Landlords might want the lease to specify that the tenant will be responsible for any damage caused by a pet. They might also want to insist on a larger security deposit from tenants with pets.

Although both children and pets can cause damage to an apartment, it's against the law for a landlord to ask for a larger security deposit from tenants with children – because this would be discrimination based on family status, which is prohibited by the federal Fair Housing Act. However, there's no law against asking for a larger security deposit from tenants with pets.



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Be careful if you're buying a condo that's new construction

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- ances or appliance allowance, what finishes to expect, and so on. This document can be dense and difficult. You'll want to make sure you understand exactly what you're supposed to be getting, and make sure the developer fulfills his or her obligations as the construction continues. (Don't just rely on brochures and verbal promises, which might not be legally binding.)
- At the time you put down a deposit, the condominium documents might not yet have been finalized. You'll want to look these over carefully as soon as they're official, to make sure you agree with the rules for the association. Are you happy with the condo fees, any restrictions on pets, and other issues?
 - If construction is delayed for any reason, will you have a place to live until the building receives a certificate of occupancy?
 - Getting a mortgage for new construction can be difficult. For instance, Fannie Mae won't back a mortgage unless a certain percentage of the units in the building are already under contract. That means that if you're one of the earlier buyers, you might have trouble getting a loan. Even if you're a later purchaser, Fannie might be reluctant to okay the building if a significant number of the units will be owned by landlords or investors, as opposed to people who actually live there.
 - Another mortgage problem is getting a good appraisal. Appraisals are based on "comparable sales," and with a new building, it might be hard to find comparable sales. An appraiser might have to rely on sales of units in older buildings, and

this could result in an appraisal that comes in below your purchase price.

- Don't assume that new construction always means high-quality construction. Developers have been known to cut corners, especially if they're having trouble selling units and need to reduce their costs. It's vital to hire a good home inspector even for a brand-new home.
 - While it's true that a new building shouldn't need any major repairs for a while, it's also true that a new association probably won't have built up a reserve fund, so condo fees might need to be higher to account for that.
 - If a significant number of units in the building remain unsold, the developer might rent them. You might wind up with a lot of short-term neighbors who don't share your level of interest in property maintenance.
 - Buyers of new construction sometimes qualify for property tax abatements. You'll want to make sure you understand what tax savings you're entitled to, and how to obtain them.
 - Closing costs can be higher for new construction, so be prepared.
- Many people who buy a new-construction condo end up with a beautiful home at a reasonable price. Just be sure to consult with a knowledgeable advisor first...so you can increase your chances of being one of them.



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Tenants could be kicked out for smoking

A cooperative's board of trustees could refuse to approve a lease renewal because the tenants smoked a lot, a New York judge has ruled.

The co-op board had the right to approve or disapprove leases in the building, although it couldn't do so "unreasonably."

In this case, the tenants lived in the building for a year and wanted to renew. During the year, the board sent two letters to the tenants complaining

about the "tremendous amount of smoke emanating from your apartment," which it described as a "fire hazard."

When the board refused to renew the lease, the tenants sued, claiming the board had acted unreasonably.

But a judge found that the board "acted for the legitimate welfare of the cooperative and thus its actions were reasonable."

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Who's responsible for damage from a fallen tree?

A big storm comes up and knocks down a tree in Bob's yard. It falls over the property line and damages his neighbor Janet's car. Is he legally liable for the damage?



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As with much in the law, it depends. Generally, though, Bob would be responsible if he knew the tree was in danger of causing damage to Janet's property, or if a reasonable person in his position would have noticed the danger. For instance, Bob might be responsible if the tree was dead or dying and was leaning precariously over Janet's driveway, or if Janet had complained to him previously that tree limbs were falling onto her parking space.

On the other hand, if the tree appeared healthy, and it was a total sur-

prise that a hurricane or tornado blew it some distance onto Janet's yard, Bob probably wouldn't be liable.

In any event, Janet's first step should probably be to file a claim with her insurance company.

If you're a property owner, it's a good idea to check your trees periodically to see if any of them poses a danger. Falling trees can cause serious personal injuries that are a lot more expensive than a car repair.

If you feel that a neighbor's trees are a danger to you, and your neighbor won't do anything about the problem, you have a number of legal options. You might be able to report the dangerous condition to the city, or to a utility company (if the tree is endangering utility equipment), or possibly sue the neighbor for allowing a nuisance. You might also be able to trim the part of the tree that overhangs your property, although you're generally not allowed to trim the part that's on your neighbor's property.

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