

Lawyer raps form contract, takes LIBOR's position to task

By **BRUCE J. BERGMAN**

The October 1983 issue of The Builder contained a well balanced review of the controversial Long Island Board of Realtors (LIBOR) proposed standard form of real estate contract. But there is, in fact, more to it than was discussed and some matters left unsaid.

What apparently is behind the LIBOR desire to disseminate a contract is not necessarily an underlying animus towards lawyers, but the view that attorneys can stand in the way of consummating a deal - thus possibly depriving a broker of the commission. Since counsel is in a position to point out the dangers or pitfalls of a particular transaction, his advice could cause a deal to fall through. While the purchaser or seller may thus have been saved from a bad bargain or the likelihood of litigation, the broker has lost the potential commission and that is what the broker seeks to avoid.

Brokers render a worthwhile service and are entitled to fair compensation for their efforts, but not at the cost of trauma or financial loss to buyers or sellers of houses - precisely what can occur if contracts are prepared, molded and supervised by individuals motivated in great measure by a desire to earn a commission.

A real estate contract session without an attorney presupposes two fallacious qualities possessed by brokers. The first is that they have the expertise and training to understand and advise as to the highly technical area of real property law. Simply put, a broker is not a lawyer and never the twain shall meet.

Second, it also assumes that a broker desires to explain all the rights and liabilities attendant to the signing of the contract. Even conceding they had the background to do that - and they don't - such an explanation places their livelihood in jeopardy. Still further, giving such legal advice could run afoul of the brokers' licensing regulations. Worse yet, the broker is the agent of the seller. How can a purchaser rely upon the guidance of the agent for the other party?

Although brokers have not fully responded to these particular points, they have presented some supposed saving graces. One is that the proposed contract advise the parties to consult an attorney if they do not understand the contract. This is hardly a saving grace because a lay person isn't in a position to know the legal effect of a multitude of contractual clauses. Thus, they are not even in a position to appreciate whether they understand the document or not. How many will hold out for their attorney when everyone in the broker's of-

fice is pushing for a signature? If subsequent to signing the contract a question emerges, an attorney can explain the person's situation. But, counsel cannot necessarily extricate the hapless party from the problem because that contract already controls the rights and liabilities of the parties.

Another brokers' argument is that the purchase of a house is just a simple matter. However, a purchase which traveled smoothly from contract to closing was not necessarily simple; it merely didn't have all the problems which surfaced. That is pure happenstance.

Law casebooks are crammed with thousands of obscure technical problems associated with real property transfers. There are literally as many potential problems as there have been

cases. Some deals are lucky enough not to have encountered the complications. But underneath it was never simple.

So, without the advice of an attorney, the buyer or seller rolls the dice. If the parties are fortunate enough to sidestep the myriad hazards, the broker can say "See, the lawyer wasn't necessary." And if problems do arise, it's the public which suffers.

There are brokers quoted as favoring the counsel of lawyers for buyer and seller. How many brokers will heed that advice cannot be known. For those that do not, the expediency of bringing buyer and seller together without a lawyer's guidance cannot be worth the enormous risks for the largest investment most people ever make.

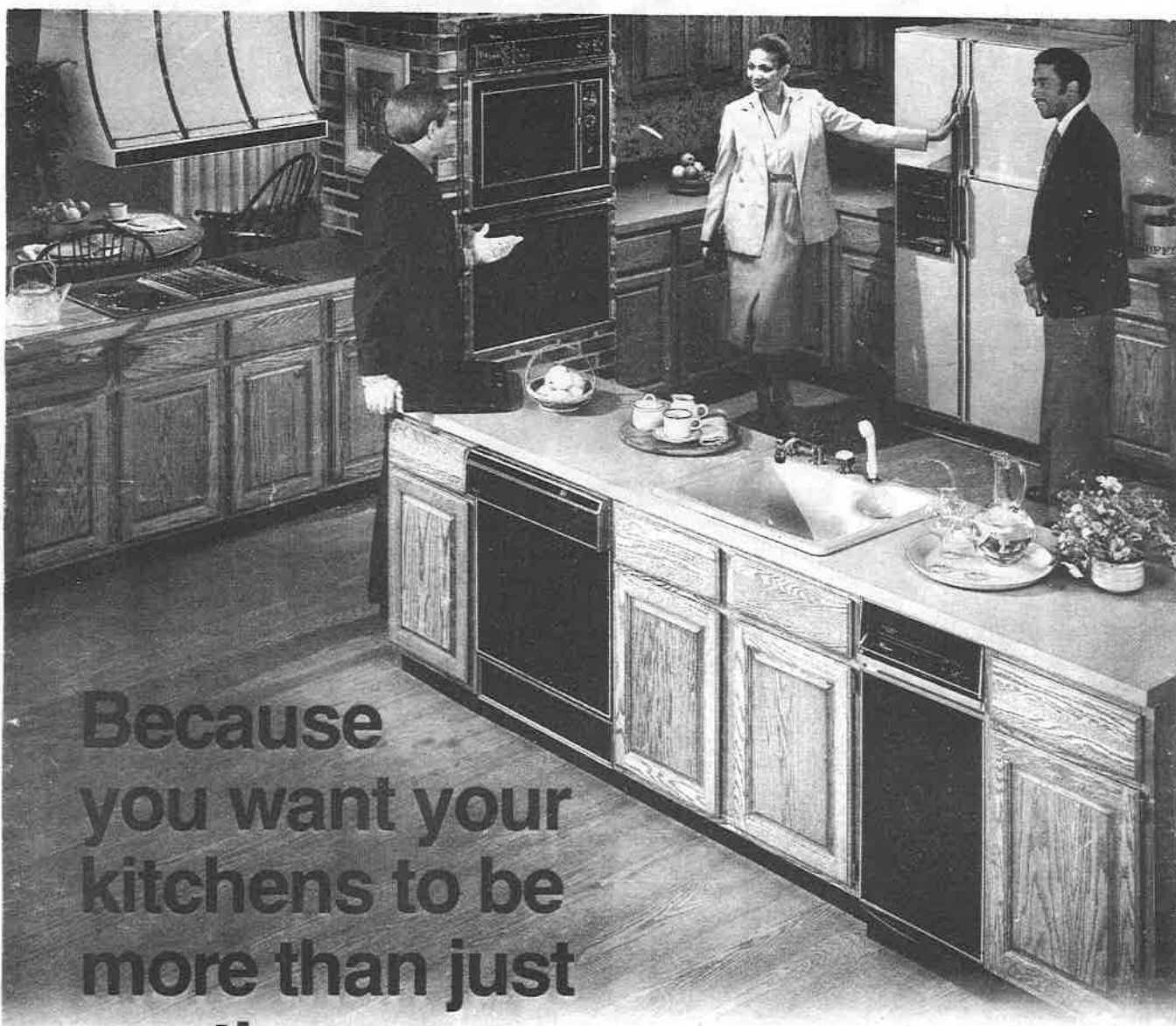


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