

LAWYER

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Attorneys urged to fight form contract by brokers

By BRUCE J. BERGMAN, ESQ.

The attention of Bar Association membership is called to a potentially serious problem for the home buying public, arising from the stated intention of the Long Island Board of Realtors (LIBOR) to disseminate a so-called standard form of "Contract For Purchase and Sale of Real Estate." It is apparently LIBOR's goal to bring buyer and seller together in the broker's office and present a contract for the parties to sign without the guidance of counsel.

Danger to the public from such a procedure is obvious, and your Association has been working diligently with the Bar Associations of Suffolk and Queens, as well as the New York Attorney General, in seeking to avoid the harm which could result.

When this problem was brought to our attention in December of 1982, both the Real Property Law Committee, under the chairmanship of Bruce Bergman, and the Unlawful Practice Committee, under the chairmanship of Paul Burlant, convened to analyze the problem. Director Theodore Hoffmann was appointed liaison between the Board and other associations and agencies while meetings were originally held under the direction of Past President Robert Corcoran, and subsequently under the direction of President Frank Santagata.

Continued on page 7

Form contract being fought by attorneys

Continued from page 1

While our continuing contract with LIBOR has elicited their promise that the contract will not be published without consultation with our bar association, it appears almost certain that the contract will come into use. Members are urged to contact Frank Santagata if they hear of the proposed contract actually being used.

For your information the following are a few of the issues we anticipate.

The proposed contract recites:

"This is a legally binding contract. If not fully understood, it is recommended to the parties to the contract that they consult an attorney before signing."

The problem is that a layman is hardly in a position to know whether he understands the contract. In a broker's office, with everyone urging signing, the parties are likely to seek counsel - if at all - only after the contract is signed, which in most instances is too late to obtain the requisite protection which only an attorney can provide.

Since a house purchase is usually the largest investment anyone will make in a lifetime, a great disservice is done to the public by exposing them to the liabilities of proceeding in a highly technical area without the advice of an attorney.

No matter how well drawn, no supposed standard form fits all situations, and this proposed contract is no exception. Aside from its shortcomings in that regard, it is replete with other deficiencies, including: no requirements for a metes and bounds description; escrow to be held by a title company and not an attorney; no provision for assumption of a mortgage; no provision for broker's commission pursuant to separate agreement; the mandate of a "marketable" title which is virtually an absolute method to back out. Without an attorney, there is no one present to provide expert advice to buyer or seller.

Supervision of the contract session will be by a broker, not an attorney. A broker is simply not the equivalent of a real estate lawyer. Moreover, a broker is the agent of one of the parties - the seller. Therefore, the broker cannot be impartial as to both buyer and seller. Still further, while an attorney's function is to protect his client, a broker's job is to earn a commission, not render legal counsel.

Bruce J. Bergman is the outgoing Chairman of the Real Property Law Committee and Secretary of the Nassau Academy of Law. He is Deputy County Attorney in Nassau County and counsel to the firm of Ain, Jonas, Libert & Weinstein in Garden City.

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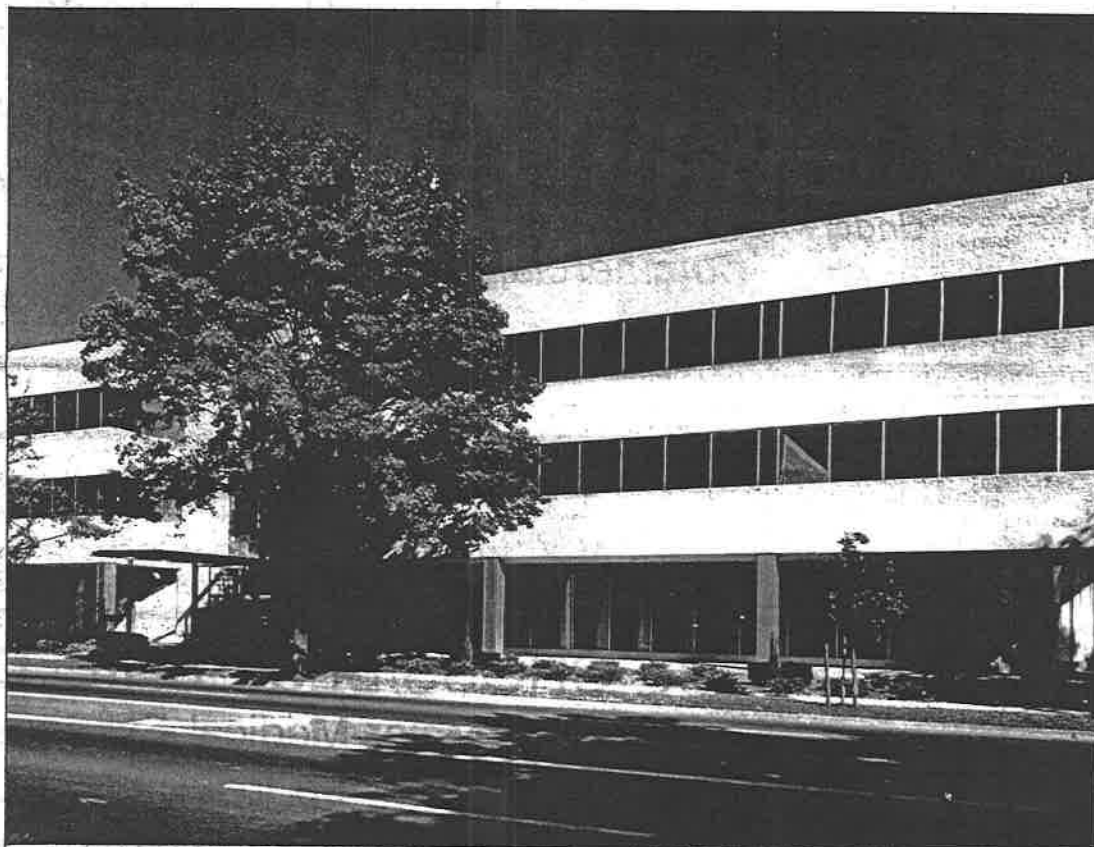
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