

Purchasing an apartment in Israel

» By Doron Afik



(INGIMAGE/ASAP)

For most people, purchasing an apartment is one of the biggest transactions they will make in their lifetime. Some (especially when purchasing a newly built apartment from a contractor) treat such a purchase like a commodity in the supermarket and sign documents or standard one-sided contracts (which are binding) without first consulting with an attorney. In this article, I will outline some of the major issues that must be considered.

Many real estate transactions commence with a short document usually entitled "Memorandum of Understanding," which states the main terms of the transaction. In many cases, such a document is not drafted by an attorney and is signed by the buyer, who is subjected to extraordinary pressure by the seller due to the dynamics of the current seller's market.

Regrettably, many buyers do not understand that such a document is a binding agreement that may create a large legal exposure if the buyer later finds that the apartment does not live up to his/her needs or expectations. All too often, the buyer will succumb to the seller's pressures for fear of losing the deal to another prospective buyer.

Israel has a well-developed land registry called Tabu, which should contain all data on any real estate property in Israel. Having a lawyer review the land registration should be the first step in any transaction. Updating the registration is vital to ensure that the property purchased is not resold. Such a review is required not only to ensure that the seller is indeed the owner of the property but

also to make sure that no unknown mortgage, lien or other attachment or encumbrance is burdening the land.

Some apartments are not yet registered at Tabu (only a "cautionary note" of the rights of buyers is registered), as the procedures for their registration have not yet been finalized. In some cases, the procedure may take years. The rights of the seller also have to be checked with the construction company that erected the building.

No transaction in real estate property can be finalized without a written document and registration with the land registry. However, to register the transaction, one has to sign an agreement, as well as provide proof of payment of the related taxes. Such approval must be obtained from the Local Committee for Planning and Construction indicating that the apartment does not have any debts and is not violating or breaching any law. All of the above must be reviewed and ensured prior to finalizing any real estate property transaction.

The payment schedule for the transaction is also an important issue to be considered. This is affected by the manner of financing the transaction (e.g., self-financing, selling of another property or mortgage), as well as other factors, such as the security given to the buyer allowing for the return of funds paid in case of breach of agreement by the seller. For example, it is not recommended to pay any amount to the seller until a Cautionary Note is registered with the land registry. Until such time, funds should be held in escrow.

Another important issue to consider are additional costs that not many consider when calculating the cost of purchasing an apartment. Such costs include legal fees and expenses; realtor fees (if a realtor is involved); mortgage and assessment fees if the purchase is financed by a mortgage; and taxes.

In the case of taxes, the tax due is influenced by certain factors, so it is vital to consult with an attorney and sometimes a tax professional regarding the various discounts and exemptions. This is especially relevant in the case of new olim, returning residents or other holders of special status who may be entitled to certain tax exemptions under the law when purchasing a new home.

In some cases, the buyer of an apartment is also the seller of his/her old apartment and will have to coordinate the two transactions. It is recommended that the two transactions be managed by the same legal counsel, as the two transactions will affect each other. For example, the dates for payments and the date of delivery of possession will have to be coordinated, and the tax burden of each of the transactions will be influenced by the other.

The purchase and sale of an apartment is not a simple transaction, so it is important that the transaction be accompanied by a lawyer who not only specializes in the field but also has suitable professional insurance.

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