

PUBLICATION UPDATE

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Real Estate Transactions: Purchase and Sale of Real Property

Publication 658 Release 27 April 2014

HIGHLIGHTS

Release 27 of *Real Estate Transactions: Purchase and Sale of Real Property* includes updates throughout the publication.

N.Y. Court of Appeals held that agent had no duty to refrain from offering to show other properties to buyers while at open house for agent’s clients. *Douglas Elliman LLC v. Tretter*, 20 N.Y.3d 875, 955 N.Y.S.2d 851, 979 N.E.2d 1178 (2012). 25.02[2][b]

N.Y. Court of Appeals held that the measure of the seller’s damages for the buyer’s breach is the difference between the contract price and the fair market value at time of the breach, not the resale price). *White v. Farrell*, 20 N.Y.3d 487, 964 N.Y.S.2d 467, 987 N.E.2d 244 (2013). 39.01[2][b]

N.Y. Court of Appeals held that a mort-

gage note did not to require the mortgagor to pay a yield maintenance fee for voluntary prepayment of loan where the note called for computation of the fee as of date of “default”; majority said result was not absurd). *Jade Realty LLC v. Citigroup Commercial Mtge. Trust 2005-EMG*, 20 N.Y.3d 881, 980 N.E.2d 945, 957 N.Y.S.2d 280 (2012) (5-1). 37.04[6]

N.Y. Court of Appeals held that to make a reservation of rights to underwater land, the grantor must do more than use the word “edge” or “shore” in deed. *Knapp v. Hughes*, 19 N.Y.3d 672, 957 N.Y.S.2d 640, 981 N.E.2d 236 (2012). 34.01[9][a]

The New York Court of Appeals held that where the contract states in a liquidated damages clause that non-defaulting party is entitled to the down payment plus bank-accrued interest, statutory interest of 9% does not apply. *J. D’Addario & Co. v. Embassy Industries*, 20 N.Y.3d 113, 957

N.Y.S.2d 275, 980 N.E.2d 940 (2012) (4-2). 39.02[4]

Cases on caveat emptor. 2.11[5]

Cases on mortgage commitment contingencies. 36.01[5]

Cases on mortgage loan modifications and settlement negotiations in subprime lending. 36.01[10][h]

Case holding that email that contained pre-printed signature was not a sufficient writing under statute of frauds. 32.02

Cases on making time of the essence. 37.01

N.Y. case discussing “best efforts” provisions in contracts. 39.01[4][d]

Case holding that Interstate Land Sales Act allowed purchaser rescission for failure to include property description (Bacolitsas) was reversed by the U.S. Second Circuit. 42.04[3][b]

New statute requires plaintiff’s attorneys to file “certificate of merit” in residential foreclosure cases. 36.07[10][h]

N.Y. Not-for-Profit Corporation Law amended respecting approvals of sales and mortgages of real estate. 24.09

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