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Route to:     \_\_\_\_\_     \_\_\_\_\_     \_\_\_\_\_     \_\_\_\_\_  
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# Real Estate Transactions: Purchase and Sale of Real Property

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Publication 658    Release 29    May 2016

**HIGHLIGHTS**

**Release 29 of *Real Estate Transactions: Purchase and Sale of Real Property* includes updates throughout the publication.**

**Important issues discussed in this release include the following:**

Under the new TRID Rules, the four disclosures under TILA and RESPA for home mortgage loans have been replaced by two: (1) the Loan Estimate and (2) the Closing Disclosure. *See* §§ 37.04[3], 7.01[8], 9.04[1], 10.01[4]. N.Y. Real Prop. L.J. article discusses whether “consummation” should mean the same as “closing.” § 37.04[3]

N.Y. Court of Appeals held (4-3) that claim seeking to void mortgage based on forged deed was not subject to statute of limitations defense. *See* § 33.02[6].

N.Y. Court of Appeals held that the statute of frauds did not apply to financial

advisory services to inform investors whether to negotiate the purchase of properties but did apply to services of an intermediary nature. *See* § 32.02[1].

N.Y. Court of Appeals held that loan servicer that had physical possession of the original note and allonge prior to commencement of foreclosure action had standing; it was not necessary to have possession of the mortgage because once the note was transferred, the mortgage passed as an incident to the note. *See* § 36.07[10][h].

Law firm provided appropriate legal advice prior to issuing REMIC opinion letter for securitization of commercial mortgage loans. *See* § 36.01[4][d].

N.Y. Real Prop. Law Journal article about the dangers of excessive delegation and deference in handling attorney escrow accounts, analyzing the Court of Appeals decision in the *Galasso* case. *See* § 2.02[7][b][iv].

N.Y. Real Prop. Law Journal article and

cases on the proper use of engagement letters. *See* § 1.01[1][f].

Case on multiple conflicts of interest as attorney for seller, buyer, real estate broker, and acting as escrow agent who never deposited the down payment check; waiver of conflicts did not adequately disclose the differing interests. *See* § 1.01[1][f].

Case holding that N. Y. Banking Law § 6-1, regulating high-cost home loans, applied to loan made to limited liability company where lender had individuals transfer title to the LLC; issue of fact whether lender told borrowers at closing that it would refinance loan in one year on more favorable terms. *See* § 36.07[10][h].

NYSBA Ethics Opinion 1022 modifies reporting of seller's concession on RP-5217. *See* § 3.12.

Primer on N.Y. mortgage recording tax. *See* § 29.34[1].

NYSBA ethics opinions on lawyers representing sellers and brokers. *See* § 7.02[2].

In N.Y. a retainer agreement assessing an interest rate of 18% p.a. was held not to be usurious. *See* § 1.01[1][f].

Cases on part performance under the statute of frauds. *See* § 32.02[4].

Cases on time of the essence. *See* § 37.01.

Cases on caveat emptor (for example, seller not required to disclose possibility of errant golf balls). *See* § 40.01.

Case holding seller entitled to prejudgment interest on award of \$1.3 million to make seller whole, not to punish the defaulting purchaser, even though money at issue was held in escrow. *See* § 39.02[2].

Cases on mortgage commitment contingency. *See* § 36.01[5].

Cases on remedies. *See* §§ 39.01, 39.02.

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Publication 658 Release 29

May 2016

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<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	1-5 thru 1-7. . . . .	1-5 thru 1-8.1
<input type="checkbox"/>	2-77 thru 2-81 . . . . .	2-77 thru 2-82.1
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<input type="checkbox"/>	7-6.1 . . . . .	7-6.1
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<input type="checkbox"/>	9-3 thru 9-4.1. . . . .	9-3 thru 9-4.1
<input type="checkbox"/>	10-1 thru 10-7 . . . . .	10-1 thru 10-7

## VOLUME 12B

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<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	24-5 thru 24-9 . . . . .	24-5 thru 24-9
<input type="checkbox"/>	25-15 thru 25-17 . . . . .	25-15 thru 25-17
<input type="checkbox"/>	25-57 thru 25-69 . . . . .	25-57 thru 25-69
<input type="checkbox"/>	26-13 thru 26-14.1 . . . . .	26-13 thru 26-14.1
<input type="checkbox"/>	27-3 thru 27-5 . . . . .	27-3 thru 27-6.1
<input type="checkbox"/>	28-31 thru 28-37 . . . . .	28-31 thru 28-37
<input type="checkbox"/>	29-29 thru 29-33 . . . . .	29-29 thru 29-33
<input type="checkbox"/>	30-53. . . . .	30-53
<input type="checkbox"/>	32-21. . . . .	32-21 thru 32-22.1
<input type="checkbox"/>	32-39 thru 32-40.1 . . . . .	32-39 thru 32-40.1
<input type="checkbox"/>	33-5 thru 33-12.1 . . . . .	33-5 thru 33-11
<input type="checkbox"/>	34-31. . . . .	34-31
<input type="checkbox"/>	34-75 thru 34-81 . . . . .	34-75 thru 34-81
<input type="checkbox"/>	35-15 thru 35-17 . . . . .	35-15 thru 35-18.1
<input type="checkbox"/>	35-55 thru 35-56.1 . . . . .	35-55 thru 35-56.1
<input type="checkbox"/>	36-29 thru 36-38.1 . . . . .	36-29 thru 36-38.1
<input type="checkbox"/>	36-61. . . . .	36-61 thru 36-62.1
<input type="checkbox"/>	36-113 . . . . .	36-113 thru 36-114.1
<input type="checkbox"/>	36-281 thru 37-12.1 . . . . .	36-281 thru 37-12.3
<input type="checkbox"/>	38-1 thru 38-4.1. . . . .	38-1 thru 38-3
<input type="checkbox"/>	39-1 . . . . .	39-1 thru 39-2.1
<input type="checkbox"/>	39-9 thru 39-52.1 . . . . .	39-9 thru 39-52.3
<input type="checkbox"/>	40-3 thru 40-24.3 . . . . .	40-3 thru 40-24.3
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