

Please sign in for special features.

Tuesday, November 22, 105 / 28 Heshvan 3866



SEARCH / SUBMIT

Shoah Victims Names  
www.yadvashem.org

UnionTelecard.com

Only 1.5¢ per minute with local access to Israel!

get yours now!

Features

- Home Page
- News
- Jewish Classifieds**
- Shoppers Directory
- Dining Guide
- Print Edition
- Subscribe

Members

- Register | Log In

Inside

- Need Help?
- Privacy Policy
- Contact

**Special Offers**

- Calling Cards

News Sections

News | Page One Feature | Editorials | Features | Opinion | Media Monitor | Columns | Torah | Letters To The Editor | Travel | Kosher Food | Books | Electronics Today | Art | Please Say Tehillim For... | Womens Page | Teens & Twenties

## Columns

### Real Estate Insider

Posted 11/16/2005

By Moshe Lazarus, Esq.

Print This Article

E-mail This Article

#### Dear Moshe:

After lots of looking, my wife and I finally found a house that works for us. We called the broker who showed us the house, to make an offer, and the broker told us that she would discuss the offer with the owner and get back to us. We were thrilled when the broker called back and told us that the owner was willing to accept our offer.

A few days later, the broker called back to tell us that she had prepared some paperwork she wanted us to sign that would make our agreement more formal. The document she sent us was a printed form, with information about the specifics of our deal filled in by the broker, by hand. The form was pretty complicated, and included a lot more information than just the agreed-upon price. It also said how much money we had to put down when we signed the contract, how much money we were allowed to borrow in order to buy the house, when we would have to close, and some other information as well. She told us that after we signed the form she would give it to the owner so that he could also sign it.

The document she sent us is a bit more formal than we expected and I guess it made us a little nervous, so we wanted to check with you before we signed it. Is this type of document normal? Should we sign it? Is there anything we should be concerned about? Thanks so much for your help, we really appreciate it.

#### Answer:

First, I'd like to thank you for your letter. Your question touches upon a subject that is very often misunderstood by the parties to a residential real estate transaction and which, due to such lack of understanding, very often leads to contention and ill will between the parties. As such, I am glad that you have given me the opportunity to address this issue, and I hope that the discussion and advice set forth in this column will help clarify any uncertainty or misunderstandings regarding this subject.

After a seller and purchaser have reached an agreement regarding the purchase price, it is not uncommon for the seller (or the listing broker) to ask the purchaser to sign a document which sets forth a number of the essential terms and conditions to which the parties have agreed. This document is generally referred to as a binder," and is intended to "memorialize" and lend a greater degree of formality to the agreement that the parties have reached, until a formal contract of sale can be signed.

However, despite the fact that binders are intended to lend a greater degree of formality to the agreement reached by the parties, it is questionable whether or not binders are in fact legally

enforceable. You see, in order for a contract for the sale of real property to be legally binding, it must, among other things, set forth with sufficient clarity the essential terms to which the parties have agreed. If, on the other hand, one or more of the essential terms of the agreement is not included in the contract (or if an essential term has, in fact, not yet been agreed to by the parties), the contract may not be legally enforceable.

As we have discussed, binders such as the one you have been asked to sign typically include several of the essential terms to which the parties have agreed, but may likewise fail to set forth several others terms necessary for the document to be legally binding. What's more, it is not absolutely clear which terms must be included in a binder, for it to be considered legally enforceable, or which terms can be left out, without undermining the validity or enforce-ability of the document. This being the case, it cannot be determined with any degree of certainty, whether or not the binder you have been asked to sign will be deemed legally binding or enforceable.

Of course, as it is not certain whether or not a binder will be deemed legally enforceable, it can potentially cause a great deal of hardship and damage for those who sign or rely on it. For this reason, binders are generally frowned upon by the legal community.

As such, I would advise you to, if at all possible, refrain from signing the binder presented to you at least until you have had your attorney review it (and of course make any modifications or amendments he deems necessary to protect your interests). If you feel that you have no choice but to sign the binder immediately (for example, if a broker tells you that he refuses to submit an offer you have made unless a binder has been signed), I would suggest that you indicate in writing on the face of the binder that your agreement to the binder and the terms and conditions set forth therein are subject to your attorney's review and approval of such terms and conditions.

Finally, and perhaps most importantly, I would urge you to always be mindful of the fact that the binder you are signing may or may not be legally enforceable by either of the parties, and that you should accordingly be careful not to put yourself in a position where this uncertainty and ambiguity can cause you injury or hardship. I'd like to conclude by wishing you much hatzlacha in your efforts with respect to this home and in all that you do.

**Disclaimer: The advice contained in this column is general in nature, and may vary greatly depending on the particulars of a given situation. For this reason, one should not rely on the advice in this column without first consulting with Mr. Lazarus or another attorney.**

*Moshe Lazarus, Esq., is an attorney specializing in real estate law. His firm represents a broad assortment of clients throughout New York and New Jersey with respect to all real estate related legal matters, commercial and residential. Moshe can be reached by phone at (845) 371-5636 or by e-mail to [mark@lazaruslawfirm.com](mailto:mark@lazaruslawfirm.com) For more information, please visit [www.lazaruslawfirm.com](http://www.lazaruslawfirm.com)*

 [Print This Article](#) |  [E-mail This Article](#)

---

Search > for

---

**Features** > [Home Page](#) | [News](#) | [Shopping](#) | [Dining Guide](#) | [Print Edition](#) | [Subscribe](#)

**Members** > [Register](#) | [Log In](#)

**Inside** > [Need Help?](#) | [Privacy Policy](#) | [Contact](#)

© Copyright 2001, The Jewish Press Inc. (ISSN 0021-6674) > [Our Privacy Pledge](#)