



*From the Law Office of Ronald H. Gitter, Esq.*

Addressing the Realities of Residential Real Estate

## Up on the Roof



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### **Your Little Piece of Country**

A terrace or roof deck can be a very valuable and enjoyable amenity. There's nothing like having outdoor space when you're in the middle of a hectic metropolis. That being said, taking over your seller's rights and obligations, when it comes to a terrace or roof deck, can come with unwanted and costly surprises.

### **The Roof Warranty**

Let's start with roof basics. In most cases, the terrace or deck is located on top of the building's roof surface. That surface consists of a roofing system, usually some type of "membrane" that the co-op or condo has been maintaining, or possibly, just replaced at great expense. That roof membrane will come with a "warranty" from the membrane manufacturer that protects the co-op or condo from defects, primarily a leaky roof. As you might expect, co-op and condo Boards are quite hinky about anyone penetrating the roof surface and possibly voiding the roof warranty. When the warranty is voided, the co-op or condo is responsible for the cost of repairing or replacing the roof surface. Not a good result. Accordingly, it is essential for a purchaser to determine whether there is an active roof warranty in place that covers the roof underneath the terrace or deck surface that is associated with the apartment in question. The seller may have been willing to assume liability for a poorly constructed deck surface or may have voided the roof warranty without the knowledge of the co-op or condo. It's one thing for the seller to assume such liabilities and obligations and quite another for a purchaser to take over those responsibilities when the apartment changes hands. Keep the following in mind as you peruse the Hudson from high above it all:

*If the warranty has been voided by the actions of the seller or by the mere existence of the terrace or deck, a purchaser may inherit the liability for the voided warranty once he or she is the owner of the apartment.*

### **You Take Your Deck as You Find It**

So it is very important to determine the condition of the deck surface and roof system when considering an apartment with a roof-related amenity. If the deck will require replacement (and that renovation has been factored into the price of the apartment), the cost of replacement can far exceed the purchase price reduction for replacing the deck surface if the purchaser has to indemnify the co-op or condo in the event the roof warranty is voided when the old surface is taken up and a new surface is installed. As a result, pre-contract due diligence requires analysis by an engineer or architect (or both) as to the condition of the deck and the roof system (to the extent that analysis can be done) to insure to the greatest extent possible that the purchaser will not become a guarantor of the integrity of the roof system.

### **The Worst Letter You Can Get: The Roof Has to Be Replaced...**

Sometimes the deck surface may be in good condition, but the roof is approaching the end of its useful life. Once a roof starts leaking, it never gets any better...and usually gets worse. When the Board determines that it's time for the roof membrane to be replaced, all fixtures, structures and personal property on the roof have to be removed in order for the roof surface to be replaced. Yes, everything goes.

*In almost all cases, the owner of the apartment will be responsible, at the owner's cost, to remove the deck surface, structures (such as greenhouses or enclosures) and personal property (including planters and other landscaping), no matter how complicated or expensive, in order to facilitate the replacement of the roof surface.*

### **What Comes Up May Not Necessarily Be What Goes Back Down**

Once you get your hands around the notion that your beautiful teak decking and loggia have to be taken up and stored somewhere, if it isn't damaged beyond recognition in the process of dismantling it to facilitate the roof replacement, to add insult to injury, you may not be able to re-install the exact same terrace surface, structures and landscaping when the project is completed. Further, in addition to issues that relate to maintaining the roof warranty, there are numerous other code issues that arise when a new terrace or deck surface is installed, including weight bearing calculations, known as the "load" factor. You will now be required to satisfy the current code requirements for the deck surface that might render your existing deck materials and installation unacceptable (e.g., your beloved oversized cherry tree might not make it back). But the big issue will no doubt be combustibility of the materials you intend to use as the deck surface. Since combustible materials cannot exceed twenty percent of the roof surface on which the deck is located, you may be required to use a non-combustible alternative to traditional wood decking or the co-op or condo may require a stone "paver system" in order to avoid the issue completely. It's something that might not be knowable when you sign the contract.

### **Everybody Gets Into the Act**

Whether you are replacing an existing deck or about to install a new one, your plans must be reviewed and approved by the building's architect and engineer, at your expense, before you commence construction. That review can result in changes to your plans and additional costs to satisfy the comments and objections of the professionals. A co-op or condo Board's primary concerns will be the structural integrity of the roof and safety. In light of several recent deck fires in various parts of Manhattan, as reported in the [New York Times](#) on July 12th, my guess is that stricter scrutiny of deck installations can be expected.

### **Residential Reality: Once Again, Do Your Due Dilly Before You Sign...**

A careful review of the governing documents and minutes of the co-op and condo and questioning the property manager extensively are prerequisites to purchasing an apartment with roof rights. Decks and terraces are wonderful amenities that often add value in a difficult market. The more complicated your deck or terrace installation, however, the greater the risk for havoc when the roof beneath your terrace or deck needs to be replaced. Make sure you understand the intentions of the co-op or condo in which the apartment is located, or you may soon find yourself in a construction zone if a roof replacement is on the horizon.

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