

# Law Currents



A Quarterly Newsletter

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## Bringing an action for specific performance of a real estate contract of sale.

By Richard A. Klass, Esq.

Typically, the sale of real estate involves the signing of a contract of sale between the owner of the real estate and the prospective buyer for a certain dollar amount. Each side is eager to close the transaction -- the seller wants the money from the closing to purchase another property and the buyer wants to move into the house.

Sometimes, the seller/owner of the real estate attempts to delay or cancel the contract of sale for various reasons, including that another party has come along offering more money to purchase the property than the contract price. The buyer is put into a position of bringing an action to enforce his/her rights under the contract of sale to purchase the property.

The right of the prospective buyer to bring an action for "specific performance" is an important one, which is based upon an old, "common law" theory that real estate is considered a "unique asset," for

which a money judgment against the seller for breach of contract cannot recompense. The courts recognize that a certain piece of real estate cannot be replicated or replaced with another or with money.

The action to force the sale of real estate based upon a breach of contract starts with the filing of a Complaint with the Supreme Court in the county in which the property is located. At or about the same time, the buyer will file a "Notice of Pendency" with the County Clerk. The "Notice of Pendency" or, as commonly known as the "Lis Pendens," is a document which serves as notice to the entire world that the buyer is laying an equitable claim to the ownership of the property and that an action is pending to determine the buyer's potential ownership rights therein. Any person who later contracts to purchase the property is effectively "on notice" of the buyer's claim and is taking substantial risk in proceeding in any transaction with the seller/owner of the real estate.

After the action is filed, the seller will have an opportunity to answer the Complaint. Then, typically, one of the parties will move for "summary judgment," asking the judge to decide whether there was a

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breach of the contract of sale and whether the buyer is indeed entitled to the specific performance of the contract of sale. If the judge decides that the buyer is entitled to purchase the property, then the judge will issue an Order directing the seller/owner to proceed to closing and tender a Deed to the buyer.

It is important for the prospective buyer to move quickly to file the Notice of Pendency when it appears that a breach of the contract of sale has or will occur, in order to ensure that there is constructive notice of the action for specific performance; otherwise, the buyer, albeit entitled to money damages, will no longer have the right to the property.

# Debt Collection Tips:

A practical guide to collecting on a debt in New York State.

Check out Your Court Street Lawyer's web-site at:

[www.courtstreetlaw.com](http://www.courtstreetlaw.com)

## Settling the debt at different stages of litigation:

Once the debtor has decided to settle and/or satisfy the debt, certain processes must be followed. The process of documenting the settlement of a collection case during different stages of the collection cycle is as follows:

**1. Pre-suit:** If a court action has not been brought to collect the debt as of yet, the debtor (or debtor's counsel) will normally insist upon receiving a General Release from the creditor, releasing the debtor from all claims. Along with the executed General Release, the creditor may be required to report the debt as settled or satisfied on the debtor's credit report.

**2. Post-suit but pre-judgment:** Once the creditor has filed an action, the settlement of the debt will include the provision by the creditor of an executed General Release and a Stipulation of Discontinuance with prejudice (thus,

dismissing the court action). The term, "with prejudice," means that the creditor cannot bring an action upon the debt again. Any counterclaims asserted by the debtor against the creditor will also be deemed waived and dismissed as part of the Stipulation of Discontinuance.

**3. Post-judgment:** Once a judgment has been entered against the debtor, the settlement will include a Satisfaction of Judgment, to be filed by the creditor with the Clerk of the Court. If the judgment was "docketed" with the County Clerk in a particular county (thereby effectuating a lien upon the debtor's real property), an official certified copy of the Satisfaction of Judgment should be filed with the County Clerk as well to ensure the discharge of the lien. It is also possible to stipulate to vacate the judgment as well.



## YOUR REFERRALS:

Any referrals of business would be greatly appreciated:

- ▶ Real estate transactions
- ▶ Cooperative Apartments
- ▶ Matrimonial law/divorce
- ▶ Commercial litigation
- ▶ Federal Court litigation
- ▶ Bankruptcy
- ▶ Appeals
- ▶ Personal Injury
- ▶ Corporate formation/business transactions
- ▶ Wills/estate proceedings

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