

# NYSUT Member Benefits Trust-endorsed Legal Service Plan PREVENTIVE LAW GUIDE



*A newsletter designed to help guide you through the legality of reality*

**Issue 96  
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## Rehabilitation vs. Punishment

*By James Orlando, Esq.*

Drug and alcohol addiction does not discriminate; it's something that affects individuals of all backgrounds, age, race and gender. The effects of addiction can be crippling on the addict as well as his or her family and friends.

Most addicts – with support – could potentially beat their habit, although it is very difficult to do it alone. There are many good people who suffer from addiction who find themselves in the criminal justice system, potentially facing jail time or probation.

Several counties in New York State, including Suffolk County, have instituted a “drug court” that is more rehabilitative as opposed to punitive. The Suffolk County Drug Treatment Court is a specialized part of the County’s criminal courts designed for those who have drug and/or alcohol addiction and who are arrested in Suffolk County on either a misdemeanor or felony. The goal of the court is to bring effective intervention to individuals caught in the cycle of substance abuse and crime.

The defendant (hereinafter called the participant) must first decide if he or she wishes to participate in the drug court. The program will require the participant, among other things, to successfully complete treatment. Court staff ensures that the participant is able to find a treatment program.

However, before a participant is accepted into the drug court, the District Attorney’s Office must first evaluate the participant, his or her case and consent, and “offer” the participant the opportunity to participate in the program.



In order to be approved for the program, the participant must reside in the county, cannot have been charged with a “violent” crime and must not have a criminal history involving violence.

The participant is required to sign a contract with the court, wherein he

or she agrees to stay in drug court for at least one year (18 months on a felony) and abide by the “rules” of the court. If the participant successfully completes treatment, the charge for which he or she pleaded guilty will be reduced, or even dismissed, depending on the original disposition contemplated between the participant, the District Attorney’s Office and the court.

However, if the participant fails to successfully complete the drug court program or is otherwise non-compliant, the court may and usually will impose the jail sentence that was previously agreed upon within the contract entered between the participant and the court.

*Continued on page 4*

# Buying a home: The engineer's inspection

By Donna Rosen, Esq.

*After looking for months (or years in some cases), you've finally found a home that you love. The seller has accepted your offer and you're looking forward to sealing the deal by going to contract.*

**Not so fast...** have you had an engineer's inspection of the premises conducted? Skipping this important pre-contract step in the home buying process can cost you both financially and emotionally.

The standard resale contract provides that you are purchasing the home in its "as is" condition as of the date of contract, reasonable wear and tear through closing excepted. The only affirmative representations provided are that the heating, plumbing and electrical systems – along with all major appliances – will be in working order at closing, and that the roof will be free of leaks.

**"Working order" does not mean** working as it did when it was new, working properly or even that the system is in good working condition. It does not mean that the system is up to building, plumbing or electrical codes, or that no safety hazards are present.

**"Working order" means** exactly what it sounds like – you flip a switch and something happens. In order to require the seller to make repairs or upgrades to a "working" system, those desired repairs or upgrades must be specifically set forth in the contract of sale.

Any aspect of the house not falling under the above umbrella of representations is considered "as is." If there's a hole in the wall at the time of contract, you are buying that hole absent an affirmative obligation in the contract that it be fixed by the seller. This applies even if the hole was behind a picture or a piece of furniture, since it could have been seen if you had only looked.

Once you have had your inspection, you must negotiate the items that you'd like to have addressed with the seller.


*Such negotiations are usually resolved in the following manner: (i) The seller agrees to the repairs and either completes them prior to going to contract or includes the repairs to be made in the contract of sale;*

*(ii) The parties agree to a monetary credit in lieu of making the repairs, which is reflected in the contract as a reduction in the purchase price or a credit at closing; or*

*(iii) The seller refuses to do anything, in which case you have a business decision to make (i.e., whether the repair is important enough to you to cause you to walk away from the deal).*

Most homebuyers do not have the expertise to properly evaluate the condition of a home in a dispassionate manner, which is where the professional home inspector steps in. A good inspector will tell you what problems must be addressed immediately, what problems can wait to be addressed in the future, and what problems you can reasonably expect to crop up further down the line.

He or she can also inform you if any structural changes were made to the home so that you can be sure to obtain all of the necessary certificates of occupancy. The inspector might even find such serious defects in the home that you elect not to go forward with the purchase at all.

Once you have reviewed your engineer's inspection and satisfactorily negotiated any repairs with the seller, you are finally ready to go to contract. Remember that obtaining representation by an attorney for your real estate transaction at a highly discounted rate is one of the many benefits of the NYSUT Member Benefits Trust-endorsed Legal Service Plan. 

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**Preventive Law Guide** is not a substitute for individual legal advice from a lawyer. The information presented here is believed accurate, but laws vary between states and every legal situation is different. If you have any questions whether information presented here applies to you, contact a plan attorney. Don't guess when you can be sure. New York residents, call the NLO at 800-832-5182; all other residents, call 800-292-8063.

For information about this program or about contractual endorsement arrangements with providers of endorsed programs, please contact NYSUT Member Benefits at 800-626-8101 or visit [memberbenefits.nysut.org](http://memberbenefits.nysut.org). Agency fee payers to NYSUT are eligible to participate in NYSUT Member Benefits-endorsed programs.

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# Credit & Loans...

By John T. Henderson, Esq.



Most businesses require the use of credit to purchase materials, have inventory on hand and pay expenses while waiting for customers to pay their bills. Without credit, the economy would not be able to operate effectively.

Credit is the ability to borrow money, in the form of a loan or pre-approved line of credit. A loan is usually for a defined amount to be borrowed and defined period of time with a defined interest rate.

A line of credit allows you or the business to purchase something now with the promise to pay for it later. The amount that you can borrow can vary up to the maximum approved amount of credit.

Common forms of pre-approved credit are business lines of credit and credit cards.

Whether you borrow money via a loan or pre-approved line of credit, you must pay interest to the lender for the privilege of using their money.

## *Types of loans*

**1. Secured Loan:** A secured loan involves putting up collateral to secure the loan. A common type of secured loan is when you pledge an asset as collateral to guarantee the repayment of the loan.

If you don't repay the loan, the lender can take or keep the asset that you pledged as collateral. Common examples of this type of secured loan include a home purchase mortgage, home equity line of credit or an auto loan.

There is another type of collateral for a secured loan, which is when you give the lender a personal guarantee for a loan to a business or someone else.

In this instance, if the business or other person defaults on the loan, you are held personally liable for repayment of the loan. This type of loan is frequently used for start-up businesses or those businesses without a credit history.

**2. Unsecured Loan:** An unsecured loan is one that is not secured by a specific type of collateral or asset. The most common form of an unsecured loan is a credit card, which does not require the borrower to put up a specific asset as collateral. The lender relies on the borrower's overall ability to repay the loan. However, the interest rates tend to be higher because the loan is unsecured and the lender is taking a greater risk by lending without collateral.

## *FICO Credit Score*

Since lenders are relying on you or your business's ability to repay a loan, most lenders rely on the

borrower's FICO credit score and credit history.

There are numerous factors considered in the FICO credit formula, but the largest single factor for individuals is your prior credit history.

On-time payment of credit is very important to maintaining a high FICO score. Additionally, the total amount of outstanding credit and number of credit types (such as multiple credit cards, etc.) has a significant effect on your score. A business FICO score of 450 is good. A personal score of 710/720 is average and a score of 750+ is considered good.

## *Review your credit score*

With all of the issues with identity theft and data breaches with major businesses, everyone should review their credit scores on a regular basis. There are three firms that provide credit scoring: Transunion, Experian and Equifax. ⚖️

**The better your credit history/credit score, the easier it is to borrow money and receive a lower interest rate.**

To receive your free annual credit score and report, visit [annualcreditreport.com](http://annualcreditreport.com) or call toll-free 877-322-8228. You can also write to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5282.

## Rehabilitation vs. Punishment

*Continued from page 1*

To ensure that the participant reaches his or her goal of success, the court implements a system of graduated sanctions and rewards. Upon successful completion of the program, a “graduation” ceremony is held during which the participant’s success is recognized by the judge, court personnel, family, and friends.

The drug court, by combining drug treatment with judicial supervision and consequences, has no doubt broken the cycle of addiction for many individuals. Studies have shown that “drug courts” have reduced recidivism compared to conventional case processing.

These same studies have shown that a successful drug court experience will lead to results that are durable over time. Drug court graduates are more likely, according to these studies, to break their addiction.


The drug courts also seem to produce higher retention rates than community-based treatment programs, thus leading to the overall success of becoming independent of drug addiction long-term.

By combining substance abuse treatment and education with case management and intensive supervision, the drug court can produce lasting changes in the

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participant’s life. And although at times the requirements could be somewhat rigorous, the “rewards” for the participant and their families are substantial and lifelong.

As a practicing attorney in Suffolk County, I can attest to the fact that this program has saved lives. I take pride in attending the graduation ceremonies of those clients of mine who have decided to participate in the drug court program. More importantly, I see how they are proud of themselves, which I believe is part of the foundation they need to begin their addiction-free life.

Keep in mind that while “drug court” practices and procedures may vary from county to county, the overall standards and goals are the same – linking addicted offenders to necessary treatment opportunities while at the same time monitoring their progress closely.

*To learn more about the drug court program, please contact Feldman, Kramer & Monaco, P.C. at 800-832-5182 or write to Feldman, Kramer & Monaco, P.C., 330 Vanderbilt Motor Parkway, Hauppauge, NY 11788. ⚖️*