

Applying Yourself

A Look at the Co-op and Condo Application and Approval Process

BY GREG OLEAR



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Buying an apartment in New York can be a smooth process—or as smooth as smooth can be when the number of attorneys present at the closing are enough to field a N.Y. Urban Professionals Basketball League team—or it can be a harrowing roller-coaster of anticipation, stress, and what often feels like needless bureaucracy.

Co-ops in the city can be tricky beasts; co-op boards have the final say over whether a prospective buyer may actually purchase an apartment in a given building, and the information boards ask for from buyers can sometimes be exhaustive. On the other hand, boards are charged with preserving and protecting the interests and investment of current resident shareholders, and most take that responsibility very seriously. Condo boards don't have nearly the same amount of authority over building business that co-op boards do, but many condo boards are pushing to run their buildings' affairs more closely to the co-op model.

Condo vs. Co-op

Owning a condo is, for the most part, like owning a house. There are

shared costs for exterior maintenance, but the apartment itself belongs to the owner, just like a house in the country does. Co-ops are a different breed of cat. If you have an apartment in a co-operative building, you own proprietary shares in the co-op, which gives you the right to inhabit your apartment. The property is much more communal than a condo. This makes buying a co-op trickier than buying a condo.

"The biggest difference is, there's an interview involved in the co-op application and not in the condo application," explains Carol E. Levy of Carol E. Levy Real Estate. After the interview—or before it, in some cases—a co-op board may reject a potential buyer.

Condo boards do not enjoy that right. When you buy a condo, the condo board can request a wheelbarrow full of paperwork—but that's all they can do, unless they exercise the nuclear option, called the right of first refusal.

"For a condo, the only way a potential buyer can be rejected is if the condo exercises its right of first refusal," says the attorney Adam Leitman Bai-

ley, author of *Finding the Uncommon Deal: A Top New York Lawyer Explains How to Buy a Home For the Lowest Possible Price*. "In order to do so, the board would have to purchase the unit on the same terms as stated in the contract between buyer and seller."

While co-ops are mandated to have ample reserve funds that may be used for such things, condos don't tend to have millions and millions of dollars sitting around in a savings account.

"It's extremely, extremely, extremely rare," Levy says.

Bailey agrees. "Very few have been done it. Out of thousands of clients, I've been involved with three. It's rare because condos don't usually have the funds to do it."

This doesn't stop condo boards from indulging their inner co-op boards. "Some condos have become as demanding—requiring so much documentation—as co-ops," says Tristan Harper, senior vice president at Prudential Douglas Elliman. "One condo asked for 32 documents to be submitted. What for? If they don't approve the sale, they have to buy the condo."

In effect, demands of this sort are

something of a dog-and-pony show. Overzealous condo boards are overreaching, perhaps trying to confer cachet on their buildings by evoking an air of exclusivity. "The fancier the building," Levy says, "the more intense the application process tends to be."

"Condos are being more like co-ops every day with respect to applications," says Bailey. "They can't reject the buyer, but they can ask for so much information—tax returns, W-2s, financial statements—that applications can be cumbersome."

For example, one condo required a buyer, who was from Singapore, to have every single piece of documentation stamped by the U.S. Consulate—which required even more red tape, as the Consulate won't stamp anything without other approvals. The sale went through, but the paperwork was onerous—and ultimately moot; the board was not going to exercise the right of first refusal.

And there are loopholes of questionable legality that some condos have found to slow down, if not stop, an unwanted sale.

"One way condo boards can block a sale is by refusing to waive the right of first refusal," says Bailey. "The parties can't close until they receive the waiver."

This won't kill the sale, provided the buyer and seller are determined to win; the board can be sued to process the paperwork. But if the sale stalls long enough, the thinking goes, the seller might get frustrated and move on. "This is improper," notes Bailey. "It should be done in a reasonable time."

Breaching the Fortress

Co-ops, of course, are legendary in their demands (although it should be noted that most sales go through easily, provided the buyers meet the financial requirements). A co-op on Fifth Avenue, for example, after finding out that the owner, a longtime resident, had a waiver in her proprietary lease that allowed her buyer to bypass the usual board approval, made the buyer's dog—a rescue dog, and therefore exempt from the usual no-pets rule—jump through a number of figurative hoops before the sale went through. Another building on Central Park South

shot down the application of one of the pundits on a popular news program—perhaps not wanting to be involved with his politics.

To be fair, there is a method to the occasional madness. It is the fiduciary responsibility of the board to keep the best interests of the building in mind. Approving a buyer of questionable net worth is not a savvy move, especially in this economy.

"They run the numbers of debt-to-income ratio—they have a whole mathematical formula," says Levy. "They want to see more income and a lot of liquidity." It's the real estate equivalent of 'You Must Be This Tall To Ride the Ride.'

"The reason Manhattan has done better than the rest of the country during the recession is that the co-ops are our housing police," says Bailey. "A bank might have given you a crazy loan during the boom, but co-ops acted as police officers to prevent people who could not afford the apartment from buying it. Consequently, there are very few co-op foreclosures."

That said, boards are not as quite as impossible to please as they were ten years ago. "Boards have come back to earth with their requests," says Bailey. "They're being less picky."

Indeed, because the flip tax is a not insignificant revenue stream in a co-op's operating budget, boards are licking their chops for applications. "Flip taxes are necessary for the financial health of a building," Levy explains. "They are factored into operating costs. Not only was the market drying up, but money wasn't flowing into the reserve funds. Boards were anxious. 'Any deals coming in? We haven't had any flip taxes.' Boards are becoming anxious to get applications in."

In fact, the "housing police" has had an easy time of it since the fall of '08. Lenders are doing a better job of doing their job. "Banks aren't lending 90 percent like they used to," says Levy. "Nowadays, you need 20 percent down to get financing."

The Broker's Role

The key player in the approval process is the broker. Brokers don't just bring buyer and seller together; they also navigate the rocky strait of the approval process to make sure the buyer's application will sail through

unscathed.

"You need a broker who will get you through the application process," says Levy. "Not just location and lifestyle, but finding a building where I know they'll get through the process."

This includes everything from intimate knowledge of every relevant building in town to presenting the application in a way that makes it user-friendly and appealing to the board. "What you're trying to do is paint a picture," Levy says. "I try to make my applications look beautiful."

"We start out with compiling the documents. Then we do our review and make adjustments. I personally pay close attention to all the details. I

was on a board, so I understand from the board's point of view what they look for and how they want it presented," says Harper. "What I try to do is hold hands throughout the process."

And in the end, it's usually worthwhile. The new owner can now enjoy the benefits of admission to an exclusive club.

"It's a hate-love relationship between the buyer and the application process," says Harper. "Ninety percent of them complain about it, but once they go through the process—and most go through it successfully—they're happy to be a member of the community." ■

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