

# Passing Down a NYC Co-op

What Every Shareholder Should Know

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ON THE BOARD



For many New Yorkers, their residence is the largest asset they will own during their lifetime. And while nobody likes to contemplate the end of that lifetime, with an estimated 700,000 co-op apartments in New York City, and roughly 75% of Manhattan homeowners calling a co-op home, it's important for co-op shareholders to understand and anticipate the common pitfalls of transferring their co-op to an heir or beneficiary when the time comes.

## Owner vs. Shareholder

Co-ops offer a unique combination of relative affordability, stability, and greater community control than condominiums. Alongside these benefits however, there are some drawbacks—including

restrictions on a co-op shareholder's ability to freely transfer their unit upon their death.

Like most assets, a co-op may be transferred directly to a beneficiary in a will or trust agreement. Unlike most other assets however, simply including a bequest of your co-op in your will or trust does not guarantee that your named beneficiary will be permitted to take possession of the unit.

This is because of the nature of co-op ownership versus ownership of a single-family home or condo unit. Unlike those types of residence, co-op owners do not hold title to real property, but rather own shares in a cooperative corporation and a proprietary lease that entitles them to occupy an apartment within the building owned by that cooperative, and governed by a board of directors elected by the shareholders.

## Friction Points

This is where friction points can emerge. Most proprietary leases allow for a late shareholder's lease to be transferred to his or her spouse without board consent, but other beneficiaries must still go through the board approval process before taking possession of the apartment, including a detailed written application, rigorous review of his or her financials, and often an interview with the board.

And although some co-ops' proprietary leases may stipulate that a beneficiary-applicant's approval 'will not be unreasonably withheld,' if a beneficiary's financials fail to meet the board's requirements, they will likely be rejected. Approval can also be withheld for other, more subjective factors, such as an applicant's profession, or their previous housing history—often without any legal requirement that the applicant be given an explanation for the rejection.

## Pay Attention to the Fine Print

When faced with the predicament of inheriting an apartment they cannot occupy, a rejected beneficiary is really only left with one choice: to sell the apartment. While receiving cash in lieu of co-op shares might not initially seem like a bad option, there may be complications here as well.

For example, many co-op buildings have provisions baked into their proprietary leases that impose a 'flip tax' on sales of shares—typically 2% of the co-op's sale price, payable by the seller—with the revenue from that fee going into the building's reserve fund.

Many shareholders would also be surprised to learn that proprietary leases often include a provision requiring their apartment to be transferred or sold within a certain period of time after they pass away. This is particularly important for whomever is tasked with executing the shareholder's estate, because the probate process is notoriously lengthy, and such a provision puts them on a strict deadline. While this may feel like undue pressure at an already difficult time, the late owner agreed to the terms when they purchased their shares, and the board has every right to enforce them. One potential solution (if the co-op allows it) may be to transfer the apartment into a revocable trust. This eliminates the need for probate and allows for the immediate sale or transfer of the co-op upon the shareholder's death.

It's also important for shareholders to be aware that the obligation to pay their monthly maintenance fees does not end upon their death. Given that estate administration can take months (or even years), co-op owners should ensure that their beneficiary or estate administrator has immediate access to liquid assets to allow maintenance payments and other carrying costs to continue uninterrupted until the apartment can be transferred or sold.

Given these hurdles to inheritance and the potential for additional stress and negative financial impact on the beneficiary, it is paramount that co-op owners pay particular attention to certain details during the estate planning process, before the need arises.

As a preliminary matter, it's crucial for shareholders to make sure they know where their original co-op documents are, including their shareholder certificate, proprietary lease and bylaws. These documents are necessary to effect the co-op's transfer, so the shareholder's beneficiary (or executor/trustee) should also know where they are and how to access them.

It's never easy when someone you love passes away. However, some simple preparations ahead of time can make all the difference between a stressful estate administration, or a seamless one.

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