HABITAT

SHOULD CO-OP BOARDS LET LLCS BUY?

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In the past few years, New York City co-op boards, particularly in downtown Manhattan, have begun to let residents buy units as **limited liability corporations,** or **LLCs,** and in some cases even as full corporations. And many boards now allow residents to change their ownership from an individual to a family trust as part of estate planning.

Why? Because as New York real estate values soar, the types of people buying apartments in the city's toniest neighborhoods are changing and want anonymity — celebrities and buyers with enormous wealth, for example — and layers of financial protection. Those who live here less than half the year owe no city residency tax, and owning as an LLC can help reduce the risk of a residency audit.

To accommodate such buyers, co-op boards are beginning to rethink old rules. "The psychology of the buyers and the boards has changed over the last 10 years. The boards are trying to become more user-friendly to the people they want in the building," says attorney **Michael Beckman,** a partner with **Beckman, Lieberman & Barandes**.

Broker **Siim Hanja,** a senior vice president at **Brown Harris Stevens** who was president of his co-op board for 14 years, says 20 percent of the co-ops he sells are structured as LLCs. Many of them are Soho lofts bought by wealthy foreigners. His own co-op recently began allowing the practice.

"It's a reflection of the changing times," says Hanja. "It's not another artist who moves in when someone retires and moves upstate. It's someone from Italy with $100 million net worth."

Co-ops have resisted corporate ownership because when an entity owns an apartment, no clear human is immediately responsible for it. If maintenance goes unpaid or damage is done, it's difficult to go after an entity, especially if the individual doesn't live in New York and holds assets in accounts out of state or out of the country.

There are symbolic reasons, too. The notion that an entity could own an apartment in a co-op runs against the fabric of what a co-op is intended to be: homes where the resident is expected to be part of the community. "Co-ops are better places to live [than condos] specifically because they don't allow for corporate pieds-à-terre," says attorney **Elliott Meisel,** a partner at **Brill & Meisel**. "Most of the better co-ops jealously guard their buildings against this."

Be Flexible, But Protect Yourself

But some co-op boards are finding that in order to accommodate wealthy buyers, they have to be flexible. Attorney **Mary Cronquist**, who is in private practice, has seen several of the co-op boards she represents face this issue. One board president told her it was "inevitable" this would happen when a celebrity asked to buy into the building as an LLC. And in a Tribeca co-op, a shareholder who was a hedge fund manager convinced the board to let him refinance as an LLC when he showed members how much money he'd save by doing it.

"Their feeling was very much that if it didn't really hurt them and it helped the purchaser, why not do it?" says Cronquist.

To protect the building, boards take steps to ensure that a real live human will be held responsible for the property, even if an entity owns it. The buyer or shareholder should sign a personal guaranty stating that the named individual of the LLC would be responsible for all the obligations of the LLC like maintenance, assessments and other co-op charges.

The buyer should also sign an agreement both as an individual and as the principal of the entity stating that only the people named in the LLC will live in the apartment and that ownership of the LLC cannot be transferred to someone else without board approval.

Among the other points:

> Any agreement should ensure that the entity submits to the jurisdiction of New York State and county.

> An agreement should designate an individual who resides in New York City to accept notices and be accountable for the property.

> An escrow account should be created to hold up to two years of maintenance charges.

"What you're doing is stripping out all the corporate protections," says attorney **Ronald Gold,** a partner with **Kagan Lubic Lepper Finkelstein & Gol**d.

In Families We Trust

While corporate ownership is still relatively rare, many co-ops are warming to the idea of family trusts. Trusts are an attractive option because, unlike a will, a trust ensures a smooth transfer of ownership of the shares of the co-op. It can also shield assets from hefty estate taxes.

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