Coops & Condos

Can anyone tell me the difference between Coops and Condos?

Co-ops (short for "cooperatives") are apartment buildings owned by a corporation. Technically they are not classed as real estate. Individual tenants do not own their apartments in exactly the same way that they would a single family home, Instead they own shares of stock in the corporation. These shares are apportioned based on the size and floor level of their apartment, and ownership is established by a stock certificate and occupancy is governed by a "proprietary lease". The corporation pays all real estate taxes, maintenance expenses, and the underlying mortgage on the building. The amount a shareholder pays towards these expenses is directly related to the number of shares she owns in the corporation.

Coops are currently the most popular form of property ownership in Manhattan. In Manhattan 85% of all apartments are Coops. And nearly 100% of all pre-war buildings are coops.

According to a survey in 2005, the city has roughly 6,700 Coop bldgs, 2,300 condos and fewer than 300 condops.

History of Coops

Question: **the first residential co-op was created in (a) 2000 BC (b) the 1700's (c) the 1800's (d) the 20th century. Now, don't laugh off choice "a," 2000 BC. While there doesn't appear to have been co-ops quite that far back, there are records of condominiums. It might be tempting to choose "d," thinking that the notion of popular "cooperation" must surely have its roots in the culture and politics of the 1960's, but you'd be wrong. The first known co-op in the world was brought into being after a large fire created a serious housing shortage in Rennes,** France in 1720, as explained by Richard Siegler and Herbert J. Cooper-Levy, member and former member of the National Association of Housing Cooperatives (NAHC), respectively, in "Brief History of Cooperative Housing," an article in a volume of NAHC's Cooperative Housing Bulletin.

There is no clear-cut answer as to when the first housing cooperative appeared in the United States. According to Siegler and Cooper-Levy, **the first American residential co-op was established over 150 years later in 1876 on West 18th Street in Manhattan**. However, Andrew Alpern says in his book, Luxury Apartment Houses of Manhattan, that historian Christopher Gray has determined the site of New York **City's first co-op to be 152 West 57th Street.** According to Alpern, that first co-op, the Rembrandt, was erected in 1881 and "was the prototype of a bevy of other cooperative apartment ventures brought to fruition over the ensuing years." He continues, "**Of these, the Gramercy, at 34 Gramercy Park, is the oldest one still extant and operating as a co-op."**

The first American co-op and several that followed, were developed by well-to-do people who wanted the advantages of owning their own homes with fewer responsibilities. According to Siegler and Cooper-Levy, **the buildings were deliberately hybrid, that is, only 40 to 50 percent of the occupants were owners. The rest were tenants whose rent, in fact, covered most of the building's maintenance expenses.**

These buildings weren't known as co-ops back then; they were called "home clubs." There was a social aspect. "People were getting together and creating camaraderie, and would decide they wanted to build apartments together." Alpern explains the appeal of these cooperative arrangements by discussing the home clubs of **Philip Gengembre Hubert, the architect of the Rembrandt: "Hubert dubbed his ventures 'Hubert Home Clubs,' capitalizing on both the aristocratic pretensions and snob appeal of the word 'club,' and at the same time emphasizing that his offerings were permanent 'homes,' rather than mere hotel-like accommodations or lowly tenement flats such as might be occupied by working classes."**

The next wave of popularity for cooperative living came in the 1920's, when the urban population boomed after World War I and individual houses became more expensive. There were many luxury co-ops, some of them incredibly expensive. **A big drawing card for the wealthy was the exclusivity**; they screened prospective tenants rigorously on personal, as well as financial, levels. **There were also middle and low income co-ops that sprang up, thanks to the New York Housing Act of 1927 which provided tax incentives for their creation.** Labor Unions such as the Amalgamated Clothing Workers Union became active in building co-ops for workers.

The Depression proved disastrous for co-ops. Tenant-shareholders defaulted on their monthly payments, and the remaining owners found themselves unable either to sell their shares or cover the gap left by the defaulters. As a result, nearly all the buildings went under by 1934.

When co-ops next appeared on the scene, in the 1940's, it was again the result of legislation. This time it was rent control provisions that led landlords to convert many buildings to co-ops. While rents were fixed; expenses continued to climb, and landlords

had to find a way to deal with the situation. Conversion provided an answer. At the same time, trade unions renewed their creation of co-ops, and there were some consumer-driven developments as well.

Lots were converted in the 60's and 70's when ownership became more desirable and there were city and state tax advantages to converting to coop. The advantage: instead of just writing off your interest expense on your own unit, you also get to write off the interest on the underlying mortgage of the building. Most buildings mortgage the building and take advantage.

The 80's Conversion Boom (which is the major contributor to our Coop market today)

In 1979, a further impetus to increase co-op conversion occurred. Binder explains, "With the Arab oil embargo, oil prices went into the stratosphere. The city was under tremendous pressure from people of moderate income to keep rents down. Landlords were between a rock and a hard place. They had to pay oil prices and 18 to 19 percent prime rates; yet the rent stabilization board didn't allow enough of a rent increase to cover those costs." Once again, many sought to use co-op conversion to come up with cash. While rising maintenance costs were definitely a factor, the impetus for the 80s conversion boom probably stemmed mainly from landlords' sheer lack of ability to make a profit on their buildings. The huge discrepancy between the market value of co-ops and the substantially lower rents allowed landlords under rent stabilization led landlords to convert in droves.

The stabilization law enacted in 1969 regulated rents in New York City for buildings constructed after 1947 with six units or more and in previously decontrolled units in buildings built prior to 1947 of six or more units. The eventual outcome of these regulations was that buildings' values were incredibly suppressed by the 80s. It was difficult, if not impossible, for landlords to make any money on regulated rentals. Converting these rentals to co-ops provided a way to get around the rent regulations. Landlords, or investors to whom they sold the buildings, realized the opportunity to split the difference between the market value of apartments and their rent-regulated value with potential owners. Bruce Cholst, an attorney with Rosen and Livingston in Manhattan, explains the negotiation, "Because tenants have a right to stay under rent laws, the sponsor offers discounts–insider prices–to tenants." Since tenants have just as much of an

opportunity to make money off the deal as sponsors do, buying the apartment at still less than the market value, many stayed with the buildings and the conversions took place at a rapid level. It was a logical conclusion of the 80s market.

Today's Market

In the '90s, there were very few new co-ops or conversions. According to Michael J. Wolfe, president of Midboro Management, Inc., "There was a movement a few years ago to convert cooperative corporations into condominiums, but the paperwork and legal costs far outweighed the advantages and it never became a trend... It is also interesting to note that much of the new construction today is rental. And as long as these rentals continue to command high prices and steady income for developers, there will be little conversion."

Even though financial motives seem to have increasingly become the sole criteria for deciding whether or not to create co-ops, it doesn't mean that, in the end, members don't appreciate the nature of their arrangement. It goes back to the early social reasoning in creating the co-ops in the first place. "Yes, you have to live with the rules that the whole co-op has made," concedes Mary Ellen Goodman, who has lived in a co-op in Greenwich Village for 30 years, "but by the same token, when there's a leak in the building, it's viewed as everyone's problem. You're not alone."

However, despite their socialist intending origins, coops quickly transformed into a bastion of capitalism and exclusivity.

Today's coops own the entire building, rather than individual apartments. Boards have the right to reject any borrower who they think does not qualify, however they wish to define qualification.

- A great deal of coops were built as rental buildings
- When a landlord made the decision to sell off the units, the most common way to do so was convert to coops
- Income: some coops have rental income coming from retail or commercial spaces on the ground floor that the coop can take advantage of.

<u>Condos</u>

The first thing to know before buying is that a condominium is real estate, real property – just like a home or other piece of property – and laws that apply to real estate sales, taxes and financing generally apply to condos.

In New York City, each condo apartment in a multi-unit building has its own **tax lot and block number.** Areas not part of a particular apartment **– like the lobby, hallways, laundry and utility rooms, outdoor areas and the land the building** is on – are called **common elements**.

Typically, each unit owner owns a specified percentage of the common elements. As a result, the entire property is owned, collectively, by the unit owners. In addition, the unit owners collectively pay the building's operating expenses through monthly common charges. **Each owner is responsible for his or her own real estate taxes.**

When a building is converted to or constructed as a condo, the **owner or developer must file an offering plan with the state attorney general's office giving the details of how the condo will operate**. Other documents that establish how the condo is run include **the condominium declaration and bylaws**. The **declaration will specify the percentage of common elements assigned to each apartment**. It will also contain details of just where an apartment ends and the common elements begin.

In some condominiums, the unit owner owns the surface of the interior walls and the space that surface encloses. In others, the unit extends to the center of the demising walls – that is, walls separating two apartments — and to the center of any exterior walls.

Under the bylaws, condos are run by a **board of managers elected by the unit owners at an annual meeting**. In some condos, each unit gets one vote; **in others, the number of votes may be determined by the percentage of common elements owned, which is determined by a variety of factors, including the size of the apartment, its value or its location**. (Common charges are typically based on the percentage of common elements owned.)

A significant issue in recent years was whether board members can be held personally liable for good-faith actions in performing their duties. At least one appeals court has ruled, basically, that they cannot. Issues that have not been definitively resolved by the courts include whether a condo association can impose a "flip tax" – a fee paid by the seller when an apartment is sold.

How is it calculated? Its usually a percentage of the sales price, percentage of profit or a certain dollar amount per share

Last week, the Federal Housing Finance Agency published a proposed rule that would limit Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from dealing in mortgages on properties encumbered by certain types of private transfer fee covenants and in certain related securities. Addressing the concerns raised by REBNY, the proposed rule now excludes private transfer fees paid to homeowner associations, condominiums, cooperatives, and certain tax-exempt organizations that use private transfer fee proceeds to benefit the property.

When the rule was first proposed last fall, REBNY and its membership launched the REBNY Action Center and contacted FHFA and key officials to advocate for exempting the Flip Tax and acknowledging a long standing beneficial practice in New York City housing. The Action Center generated 629 letters - which were over a quarter of the total comments submitted to the FHFA.

Also, lead by Congressman Anthony Weiner, the entire New York City House delegation supported the New York City housing industry and swiftly signed and submitted a letter requesting that federal funds should continue to be available when transfer fees are paid to a cooperative or management to the benefit of a building.

The press release and the proposed rule are attached and REBNY's history of actions on the Flip Tax can be found on the REBNY website at

Right of first refusal: Generally, the only way a condo association can block a sale is to buy the apartment. This is known as the "**right of first refusal"** and is rarely used because it typically requires a vote of the unit owners, and the condo association must come up with the money. Usually it is 30 days. It's a legal concoction that gives condo boards the ability to derail an impending sale by buying the apartment from it's current owner. Condo must buy the apartment on the same terms and conditions the seller is prepared to accept from an outside buyer so that the seller is no worse off if exercised. Verydifficult to execute.

Condop:

A condominium building that has separate commercial and residential units, with the residential units controlled by a co-op corporation. The separate commercial units are typically retained or sold separately by the developer and can include retail space, office space and a parking garage. New York City has fewer than 300 condops.

New Development Coop – Atlantic Terrace – Red Hook.

Q: Name differences between coops and condos:

- Maintenance vs Common Charges – Maintenance includes the interest expense of the underlying mortgage which can be written off.

- Cash Requirements
- Interviews:
    - Q: Has anyone been involved in a board-turn down?
    - Q: What are some of the reasons a board can't turn down a purchaser?
- Flip Tax:
    - Q: What are ways to calculate?
- First Right of Refusal.
- Sublet Policy

- Board Package (always for a coop). Some condos are asking for application.
    - Q: what typically goes into a board package?
- Condo is real property = deed.
- Condos up to and sometimes more than 90% financing.

Coop:

- 80-20 Rule: no more than 20% of the income in a coop can come from something other than maintenance. **IRS ruled about a year ago to abolish this rule but many banks are still requiring.**

Condos – no more than 20% commercial space.

Advantages/Disadvantages:

- **Why condo over coop? Investment; parents buying for children; independent contractors; foreign buyers; celebrities**
    - Financing is more flexible
    - The application process is simple. No interview.
    - Greater flexibility in sub-leasing the unit.
    - Monthly combined common charges and RE taxes in a condo are generally less than a coops monthly maintenance charges, resulting in a higher purchase price.

- **Why coop over condo? People who want to live around owners – less transient. Sharing ownership** .
    - **Coops are typically less expensive than condos because they are more restrictive of who can buy into the building**, usually 10- 20% less expensive.

- The tenant-owners elect a Board of Directors, whose responsibility is to meet, interview and "approve" or "disapprove" a prospective owner, thereby protecting the present tenants' interest by approving only qualified candidates.
- Cooperative ownership offers a more stable community environment. Residents tend to stay for longer periods of time, and few co-ops allow extensive subletting, preferring a high owner-occupancy.
- A large portion of the monthly maintenance fee paid by each shareholder is tax deductible, i.e., the pro-rata share of the corporation's real estate taxes, as well as the building's underlying mortgage payment.

Disadvantages:

Coop:

- The board often requires a large cash down payment. Usually prospective purchasers are required to put 25% down. Some co-ops may require more. Many of the most exclusive buildings permit no financing at all.
- Most co-ops prefer owners to be occupants; therefore subletting an apartment may be difficult. Each co-op board has its own set of rules, but generally speaking, subletting will have to be approved by the board, and permission is usually granted for no more than 2 years. Some co-ops, however, are more flexible and are known as "easy boards".
- Almost all renovations to individual apartments will have to be approved by the board.
- The co-op application process is quite lengthy and may require flexibility in terms of occupancy date.
- Renting in a co-op building is referred to as subleasing. Prospective tenants (sub-leasors) are subject to the same application process as someone wishing to become a shareholder.

Condo:

- Condos are typically more expensive because they are less restrictive in areas such as the buyers' finances, renting the apartment and approval to complete renovations.