



HOW TO:

Protect Your Co-op When Granting Share Transfers to a Trust



MARK AXINN
Chair,
Cooperative and
Condominium
Practice Group,
Phillips Nizer

Accommodate the aging. As part of their estate planning, elderly shareholders often want to transfer their shares into an entity for the benefit of their adult children or their grandchildren. The trust would own the apartment, so whether or not the individual has to probate a will, this apartment is no longer part of it. If the co-op can do this, there's no reason not to as long as the co-op is protected.

Maintenance guarantee. For a long time, boards have tended to bar shareholders from transferring their shares to trusts. Their biggest concern is financial — that is, who is going to pay the maintenance, since a trust is an

entity with no income. Co-ops can protect themselves by including an ancillary agreement with the formal transfer document in which the shareholder and the trustee personally guarantee they will make the payments.

Occupancy agreement. The other big concern is who is going to live in the apartment, since boards don't want the shareholder to suddenly have rights that aren't granted to other shareholders. So if Mrs. Smith has the right to sublet two years out of every five, then you create another supplemental agreement saying the Mrs. Smith replicable trust must adhere to those rules as well. And if she dies, the agreement specifies who can live there until the apartment is sold. If the apartment remains empty, we usually have some sort of agreement that the trust will sell the apartment within six months or a year.

No cost to the co-op. There's no reason not to accommodate shareholders if the co-op is not jeopardized, it's done at the shareholder's expense, and the co-op doesn't pay for these documents. Typically, document drafting gets billed to the shareholder as part of the transfer of the apartment. ■



SHUTTERSTOCK/FAGREIA