

BARRY MALLIN & ASSOCIATES, P.C.

- supervising the sale of apartments and approving new members
- insuring compliance with income limitations and re-sale provisions and governing documents of the cooperative
- enforcing shareholder obligations under the proprietary lease
- attending to any litigation involving the cooperative
- mediating disputes between shareholders

Rights and Obligations of Shareholders

The underlying rationale of a cooperative's legal structure is to achieve a balance between the individual shareholder's rights as the owner of his own home and the need to protect the interests and rights of the rest of the members.

Summary of Rights

As members of the cooperative, shareholders receive the right:

1. to permanent, long-term occupancy of the apartment. The term is typically 99 years and can be renewed by the shareholders residing in the building when the proprietary lease expires.
2. to sell their shares and assign their proprietary leases, subject to compliance with re-sale provisions and procedures and the consent of the board of directors.
3. to make capital improvements and alterations in their apartments, subject to procedures and requirements of the lease and consent of the board.

4. to use the shares and proprietary lease as security for personal loans, subject to the consent of the board.

5. to sublet their apartments, subject to the consent of the board.

6. to participate in the affairs and operation of the cooperative through shareholder meetings and elections and through membership on the board of directors and/or committees.

7. to take a pro rata share of the corporation's real estate taxes and mortgage interest payments as personal income tax deductions, subject to the provisions of section 216 of the Internal Revenue Code.

8. to receive annual financial statements and to inspect the corporation's books and records.

Summary of Obligations

As members of the cooperative, shareholders have the obligation

1. to pay the monthly maintenance or carrying charges as fixed by the board of directors.

2. to abide by the terms and conditions of the proprietary lease and the cooperative's by-laws.

Major breaches of the lease which can result in forfeiture of the shares and eviction from the apartment are:

a) default in maintenance payments

b) unauthorized sale, subletting or occupancy of the apartment

c) objectionable conduct in violation of the house rules (i.e pattern of excessive noise at late hours which disturbs neighbors)

3. to pay the cost of repairs and decorating (i.e. painting) within the apartment.

By-Laws of the Cooperative

The by-laws set forth the rules for governing the cooperative corporation. Except as mandated by law or controlled by provisions in the certificate of incorporation, the by-laws regulate most aspects of the corporation's operation. The by-laws usually track the rules for conducting the affairs of a corporation set forth in the New York Business Corporation Law and may not contradict the provisions of this statute.

The explanations that follow of by-law provisions describe prevailing practices, but by-laws may vary in different buildings.

Specific Provisions of the By-Laws

Meetings of Shareholders

The by-laws will describe procedures and requirements for conducting meetings of shareholders. The key provisions include,

1. Place of Meeting. At the cooperative or at such place specified in the notice of meeting.
2. Annual Meetings. A meeting of shareholders must be held at least once per year for the election of directors. The by-laws must specify when the annual meeting is to be held.
3. Special Meetings. Typically, By-laws will specify when and how special meetings may be called. Special meetings of shareholders may be called by the president, by the board of directors or by a specified percentage of shareholders (usually 25 percent).

4. Notice of Meetings. By-Laws will specify how notice of meetings shall be given. For example, written notice of the annual meeting must be given personally or by mail to each shareholder not less than ten nor more than forty days before the meeting. Written notice of a special meeting also must state the purpose of the meeting. The attendance of a shareholder at a meeting without protesting the lack of proper notice shall constitute a waiver of the notice by that shareholder.

5. Quorum. The definition of quorum will be specified. Usually, a majority of the shareholders, in person or by proxy, will constitute a quorum.

6. Voting. The general rule for cooperatives is to permit shareholders to vote according to the number of shares owned by them. In electing directors, most cooperatives utilize what is known as cumulative voting in which each shareholder may cast a cumulative total of the number of shares he owns multiplied by the number of directors to be elected. This total number of votes may be distributed by the shareholder in any manner he chooses among the candidates for election. In an effort toward more democratic representation, many limited equity cooperatives contain provisions in their certificate of incorporation providing for one vote per apartment, regardless of the number of shares owned by the shareholder.

7. Eligibility to Vote. Any restrictions on voting eligibility will be included in the By-Laws. Many cooperatives for example, require shareholders to be current in their maintenance charges to be eligible to vote.

8. Proxies. Most by-laws will permit a shareholder to appoint another person to vote at a meeting in his/her behalf. This appointment, known as a proxy, must be submitted to the

corporation's secretary prior to the start of the meeting and it must be in writing, signed by the shareholder, but need not be notarized or witnessed.

9. Order of Business. The order of business at all regularly scheduled shareholder meetings will be specified, generally in the following order:

- a) call to order; determination of quorum
- b) proof of notice of meeting
- c) reading of minutes of preceding meeting
- d) reports of officers
- e) reports of committees
- f) election of directors (if annual meeting)
- g) unfinished business
- h) new business
- i) adjournment

Directors of the Corporation

The business of the corporation must be managed under the direction of its board of directors. By law, it is improper for the directors to defer corporate decisions to the shareholders. If an issue is particularly controversial, the directors may call a shareholders meeting to hear opposing arguments and to seek a consensus, but the determination of the issue must be made by a vote of the Board.

The key by-law provisions relating to directors are:

1. Number and Qualifications. The number of directors must be specified (usually an odd number to avoid tie votes) and may not be less than three. Directors must be shareholders who are at least 18 years of age. Many cooperative by-laws provide that no more than one director may be elected from any one household or family.

2. Powers and Duties. The Board must determine the cash requirements needed to operate the cooperative and must fix the monthly maintenance charges to be paid by each shareholder. The Board has the power to prescribe the manner of maintaining and operating the building. Every such determination will be final and conclusive as to all shareholders and any expenditures made by authority of the Board will be deemed necessary and proper.

3. House Rules. The Board may adopt and amend such House Rules as it may deem necessary for the health, safety, convenience and enjoyment of the shareholders.

4. Election of Directors. Directors should be elected at the annual meeting of shareholders and serve for a term of one year.

5. Resignation and Removal. Any director may resign by delivering a written resignation to the office of the Corporation. Most by-laws provide that a director may be removed from office at any duly called regular or special meeting of the shareholders and a successor may then be elected to fill the vacancy. Vacancies resulting from the resignation or death of a director generally may be filled by a vote of the remaining directors until the next annual meeting of the shareholders.

6. Regular and Special Meetings of the Board. Regular meetings of the Board may be held at such times as determined by the directors, but no less than four times per year. In most

cooperatives, the Board will meet monthly, or more often, depending upon the decisions it must confront. Notice of a regular meeting must be given to each director personally or by mail or telephone at least two days prior to the meeting. Special meetings may be called by the President or by the request of ten percent of the directors on one day's notice. At all meetings, each director shall be entitled to one vote.

7. Quorum. A majority of the directors constitutes a quorum for the transaction of business.

Officers of the Corporation

The individuals responsible for the day-to-day functioning of the cooperative are the officers of the corporation. As is the case for most corporations, the officers of a cooperative are selected by the board of directors, not by the shareholders. They are usually chosen from among those individuals who have been elected to serve on the board. Cooperatives may chose to hire managing agents to perform many of the tasks of operating a building, but the directors and officers are still the chief management officials. The key by-law provisions relating to officers are:

1. Designation. The principal officers of the Corporation are the President, Vice President, Secretary and Treasurer and they must be shareholders of the cooperative.

2. Election of Officers. The officers should be elected by the Board at the first meeting of the Board following the annual meeting of shareholders and hold office for one year terms. Officers may be removed by a majority vote of the Board.

3. Duties of President and Vice President. The President presides at all meetings of the shareholders and of the Board of Directors. The president or vice president must sign all contracts, leases, mortgages and other instruments which are authorized by the Board. The president, subject to the control of the Board, has the general management authority over the affairs of the Corporation. In the event that the president is absent or cannot perform his duties, the vice president shall have the power to exercise the duties of president.

4. Duties of Treasurer. The treasurer is responsible for the funds of the corporation and for depositing such funds in the Corporation's bank account. He is responsible for keeping full and accurate accounts of all receipts and disbursements in the books of the corporation and for furnishing financial reports to the shareholders.

5. Duties of Secretary. The secretary is responsible for maintaining the general files of the Corporation. He must keep the minutes of the meetings of directors and shareholders and is responsible for providing to shareholders and directors notices of meetings. The secretary also must maintain a record book containing the names of shareholders, numbers of shares owned, when acquired, price paid for the shares and other information needed to calculate the distribution of resale proceeds.

Fiscal Management of the Corporation

The by-laws contain basic procedures for maintaining the financial records of the Corporation.

1. Books and Accounts. Books and accounts of the Corporation must be kept under the direction of the Treasurer in accordance with generally accepted accounting procedures.

2. Auditing and Annual Reports. At the close of the year, the books and records of the Corporation must be audited by an accountant. (The hiring of a certified public accountant (CPA) for this purpose is recommended, but not required). Based upon the accountant's report, the Corporation must furnish shareholders with an annual financial statement, including the income and expenses of the Corporation. The shareholders also are entitled to a statement showing each member's pro rata share of real estate taxes and mortgage interest paid by the Corporation during the preceding year.

3. Examination of Books. All shareholders have the right to inspect the books, records, documents and accounts of the Corporation, at reasonable times at the office of the Corporation.

4. Signing of Checks. It is advisable for all cooperatives to follow the customary practice of requiring the signatures of at least two officers on all checks, usually the president or vice president and countersigned by either the secretary or treasurer. No officer should sign a check without knowing what expense the check is to cover.

Compensation of Directors and Officers

Most low income cooperatives provide that no compensation be paid to directors or officers for their services as directors and officers. No enumeration may be paid to a director or officer for services performed by them in any other capacity, unless a resolution authorizing such payment is approved by the board before the services are undertaken.

Transactions with Directors and Officers

The directors and officers are elected by the shareholders and owe a duty to act on their behalf. Directors and officers should manage the cooperative in a manner that is free from even the appearance of self-interest. The by-laws should provide rules that must be followed to avoid accusations that directors acted for personal gain rather than for the benefit of the members. Typical provisions are as follows:

1. Loans to Directors and Officers. Loans to directors, officers and shareholders are prohibited.

2. Dividends. The Corporation may not pay dividends or distribute any of its income or profits to any of its shareholders, directors or officers. All funds received by the cooperative must be used to pay the expenses of operation, undertake capital improvements or to establish reserves.

3. Contracts with Directors and Officers. Contracts between the Corporation and any director to provide services to the cooperative may only be valid if the board approves the contract without counting the vote of the interested director and full disclosure is made of the director's interest in the transaction. In the alternative, the shareholders may authorize such a contract, if full disclosure is made.

Indemnification of Directors and Officers

In general, directors and officers of a corporation are not personally liable for claims involving the Corporation if the director or officer acted in good faith for a purpose he reasonable believes to be in the best interest of the Corporation. The by-laws may provide for the corporation to indemnify, or reimburse, such director or officer against personal judgments or

claims arising out of the performance of his corporate duties. However, a director or officer may be personally liable if he performs his responsibilities in a negligent or unlawful manner. Most such situations involve loose supervision over or improper handling of the corporate funds

Amendments to the By-Laws

The manner in which by-laws may be amended varies among cooperatives. Some provide that only the shareholders may amend the by-laws, while other buildings permit amendments by either the shareholders or directors, with the percentage of votes needed to approve an amendment ranging from a majority up to 75 percent.

The Proprietary Lease

The proprietary lease (or occupancy agreement) is the basic agreement between the cooperative corporation and each of its shareholders. The lease is long term, typically 99 years, and establishes the rights and obligations of the parties concerning the shareholder's use and occupancy of the apartment. One master form is used for the cooperative, with the corporation and each shareholder signing an individual copy.

The explanations that follow describe the key provisions of a standard proprietary lease (also known as an occupancy agreement), but cooperatives may amend these provisions to fit their needs.

Maintenance (Rent)

Each shareholder is obligated to pay the monthly charges, including late payment fees, as fixed by the Board. The Board also possesses the power to levy assessments upon the shareholders to pay for large capital expenses.

Services Provided by the Cooperative Corporation

The Corporation is required to maintain and manage the building and must keep the common areas properly cleaned and lighted. The Corporation is obligated to provide the apartments with basic services, such as heat and hot water.

Repairs

The Corporation is required to keep in good repair the entire building, including the apartments and common areas, except those parts of the building that are stated to be the obligation of the shareholder. Repair responsibilities commonly imposed upon shareholders include the interior walls, floor and ceilings of the apartment (including painting), plumbing, gas and heating fixtures within the apartment, all appliances, such as refrigerators and stoves, and all lighting and electrical equipment in the apartment. The interior of the apartment may be looked upon as the shareholder's own home and he/she is responsible for repairs within that home.

The line between whether the Corporation or the shareholder is responsible for a repair can sometimes lead to disputes. In general, the rule is that if you can see the pipe, equipment or fixture within the apartment, then the shareholder must maintain and repair it; if you cannot see the pipe, equipment or fixture, then the Corporation is responsible.

The Corporation has the right to make emergency repairs within an apartment if the shareholder refuses to do so and to charge the shareholder for the work.

Improvements and Alterations

A shareholder may not undertake major improvements or alterations within the apartment without first obtaining the written consent of the Board. The Board must have a valid reason if it

decides not to give its consent. Improvements requiring consent generally include apartment alterations involving the water, gas, electrical and heating systems and pipes. The role of the Board is to insure that the planned project will not disrupt or cause damage to the building's systems or structure.

Use of the Apartment

Most limited equity cooperatives require that the apartment be used as the personal and primary residence of the shareholder. The intention is to provide housing for a low income person or family, not as a vehicle for real estate investment. The shareholder may occupy the apartment with his spouse and other family members (typically defined as children, grandchildren, parents, grandparents, brothers and sisters). Many cooperatives permit the shareholder to live in the apartment with a roommate. Guests are usually permitted for up to one month periods, provided that the shareholder remains in occupancy. Troublesome issues arise when a shareholder moves out, leaving the so-called "guest" behind in the apartment. If the Board has not approved such an arrangement, then the Board may declare this to be an improper sublet and seek to terminate the lease and recover possession of the apartment.

Subletting

If the shareholder desires to sublet his apartment, he must obtain the written consent of the Board (or, if the Board refuses its consent, by approval of shareholders owning typically at least 2/3 of the stock). Any consent to subletting may be subject to such conditions as the Board may impose. In a low income cooperative, a Board might ask to see a copy of the sublease and require income verification to insure that the sublessee qualifies as a low income person. Many

limited equity cooperatives prohibit any profit to be made by the shareholder under the sublease, and place limits on the length of time during which an apartment may be sublet.

Assignment

Any assignment, sale or transfer of the lease and shares to the apartment must be approved in writing by the Board (or if the Board refuses, by the holders of typically 2/3 of the stock). The customary procedure is for the Board to interview the prospective buyer and check personal and employment references. The Board may ask for income verification and copies of tax returns to insure that the buyer is income eligible. In general, a cooperative Board has total discretion over whether to consent to a sale (as long as a disapproval does not violate any civil rights laws).

An exception to the general rule regarding Board consents involves what happens upon the death of a shareholder. If the shareholder is survived by a spouse, then no consent is needed for the lease and shares to be transferred to the spouse. (In many cases, the spouse may already be a co-owner of the shares.)

The transfer of the shares and lease to any other person requires the board's approval, with the proviso that the Board may not unreasonably withhold consent to a financially responsible member of the deceased shareholder's immediate family. This means that the Board must have a valid reason for denying approval of such person.

In deciding whether to give approval of a transfer of the stock and lease in the event of a shareholder's death, the Board first must ascertain who is the rightful heir of the deceased. The Board cannot give approval to a member of the immediate family if another heir has the right to

inherit the property. The Board should avoid becoming involved in a struggle between competing relatives. For this reason, the Board should request proof as to who may legally inherit the property, such as documentation from the local Surrogate or Probate Court.

Except in the case of a spouse, the right to inherit does not give the heir the right to occupy the apartment. In rejecting occupancy to a member of the deceased's immediate family, the Board must provide a valid reason for its action. Illustrations of such reasons are:

1. the applicant is not low income
2. a history of disruptive behavior as a tenant
3. the applicant is not financially responsible as evidenced by a poor credit or employment record
4. the applicant does not intend to use the apartment as his/her primary and personal residence.

If the heir does not wish to move into the apartment or is rejected by the Board, he/she is still entitled to benefit from the sale of shares to a third person. The heir has the right to receive from the sale whatever monies would have gone to the deceased shareholder, minus any maintenance arrears or other debts owed to the cooperative.

House Rules

The Board has the power to adopt House Rules regulating various conduct within the cooperative. The House Rules are incorporated in the Proprietary Lease and a breach of the Rules constitute a breach of the Lease. House Rules usually prescribe such matters as the manner in which garbage should be disposed of, restrictions on the playing of music or electronic

equipment in a loud manner after 11 p.m., and the use of laundry facilities and public areas of the building.

Pledge of Shares and Lease

The shareholder may use his shares and lease as security for the repayment of a loan, but only with the consent of the Board. The Lender usually requests that the Board execute a Recognition Agreement, acknowledging that the Lender is holding the shares and lease as security until the loan is paid. A shareholder may seek a loan to borrow the funds necessary to purchase the unit.

Amendments to the Proprietary Lease

The terms of the Proprietary Lease may be amended by an affirmative vote of members owning at least two-thirds of the shares of the cooperative. Items which are controlled by agreements with government agencies or by statutory provisions, such as low income re-sale provisions, may not be altered by the shareholders.

Enforcement of the Proprietary Lease

A cooperative Board must sometimes confront the serious issue of how to handle a shareholder who has violated the terms of the lease. This violation may take the form of failing to pay the maintenance on the apartment or non-financial matters such as unauthorized subletting of the unit. Since the defaulting shareholder is a part owner of the cooperative as well as a neighbor, this situation poses difficult problems for the Board. Most Boards will attempt to deal

with the default with a letter from the directors, followed by a letter from the Corporation's attorney if no progress is made. The directors may request that the shareholder meet with them to seek a resolution. If all efforts to resolve the issue fail, then the Board may have to turn to litigation. It must be remembered that the directors have a responsibility to protect the interests of all of the members of the cooperative. If a shareholder does not pay his fair share, then this impacts on all of the members. Below is a summary of the litigation options available to a cooperative Board in the case of a shareholder who is in violation of the lease.

1. Non-Payment of Maintenance Charges

The Cooperative possesses two principal methods for enforcing the requirement of shareholders to pay the monthly maintenance.

a) Non-Payment Proceeding. If the shareholder has defaulted in the timely payment of maintenance charges, then the cooperative (after service of proper notice to cure the default) can commence a non-payment action to evict the shareholder. The shareholder can terminate the proceeding by paying the past due rent, plus any late charges and legal fees, at any time before the issuance of a warrant of eviction.

b) Hold-Over Proceeding. A difficult situation faced by cooperative boards is what to do about the shareholder who consistently pays his maintenance late. Chronic late payment of maintenance undermines the Board's ability to pay its own bills on time. Non-payment actions are often not effective, because the shareholder can stop the proceeding by paying the arrears. An alternative procedure is for the Board to send the shareholder a notice that the lease is being terminated by reason of the shareholder's history of late payments. The Board

could seek to deem this conduct to be "objectionable" justifying a termination of the lease. If the problem is serious enough in a particular building, the shareholders should consider adopting an amendment to the proprietary lease declaring that a pattern of repeated late payments (e.g. five such payments within a 12-month period) constitutes separate grounds for termination of the lease.

If the shareholder refuses to vacate the apartment after receiving a notice of termination of the lease, the Board may commence in court what is known as a hold-over proceeding, in that the shareholder is "holding-over" after the termination date.

2. Other Types of Defaults

Other types of defaults under the proprietary lease include unauthorized assignment, subletting, occupancy or alteration of the unit or objectionable conduct on the part of the shareholder or other occupants of the apartment. Objectionable conduct has been defined by a court as unreasonable or unlawful conduct to the annoyance, inconvenience, discomfort or damage to other shareholders. The lease also prohibits a shareholder from permitting or tolerating a person of "dissolute, loose or immoral character" to enter or remain in the building or in his apartment. To declare that a person's tenancy is undesirable requires a two-thirds vote of the Board or by shareholders owning two-thirds of the stock. Legal enforcement of such defaults include:

a) Hold-Over Proceeding. If the shareholder has violated the lease, the Board can seek to evict the member by sending a notice of termination of the lease and then commencing a

hold-over proceeding. If successful, the Board may evict the shareholder and then sell the shares to the apartment.

b) Injunction. If a less drastic step is called for, when, for example, the Board desires to remedy the breach but does not want to evict the shareholder, an alternative method is a court action for an injunction. This procedure can be effective in preventing an unauthorized alteration, sale or subletting of a unit or to gain entry to an apartment for needed repairs.

Contracts with Outside Parties

One of the responsibilities of the Board is to enter into agreements with outside parties to provide services for the cooperative. The most important of these contracts are agreements with contractors to undertake repairs and improvements and with management agents to provide management services for the building. Every contract entered into by the Board should describe clearly the scope of work to be performed, how much it will cost, how long it will take and the rights of the Board to terminate the agreement. The Board should always check references before it engages the services of an outside professional.

The Board may hire an outside company to manage the building, but it must be remembered that the Board and its officers still bear the primary responsibility for protecting and safeguarding the interest and financial assets of the corporation and its shareholders.

The following is a checklist of items to be covered in a management agreement, in the event the Board decides to engage an outside firm to render such services:

1. Scope of Services. In general, a Management Company should be responsible for:

- cleaning and maintenance of the building

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- hiring personnel, subject to the approval of the Board, to perform these services
- engaging contractors, subject to the approval of the Board, to make necessary repairs
- collecting and depositing in the corporation's bank account the monthly maintenance charges
- paying the bills of the cooperative
- handling shareholder complaints
- complying with all building codes and clearing violations
- preparing and filing government, tax and employment forms

2. Records. The Management Company should be required to maintain records in accordance with generally accepted accounting standards and procedures, showing income and expenditures and the assets and liabilities of the cooperative. The Corporation should have full right to inspect all of its records held by the Management Company, including checks, bills, invoices, and statements. The Management Company should provide the Corporation with monthly and yearly financial statements. The monthly statements should be supported by copies of documentation (canceled checks, bills, etc.).

3. Bank Account. The Management Company should maintain a bank account on behalf of the cooperative and should provide the cooperative with copies of all records relating to the account (statements, cancelled checks, deposit slips, etc.).

4. Insurance Coverage. Subject to the approval of the Board, the Management company should make certain that all insurance policies are current and are in sufficient amounts

to properly protect the Corporation. The Management Company should promptly investigate and make a full written report regarding all claims against the Corporation.

5. Compensation. The typical management fee ranges from between six to eight percent of the monthly rents collected. The Corporation should ascertain whether there are hidden fees not anticipated (e.g. the Management Company might seek to allocate building funds to pay the cost of its bookkeeper or other office personnel).

6. Termination. The Corporation should possess the right to terminate the contract (with or without cause) on thirty days notice. Upon termination, the Management Company should be required to turn over all of its records in its possession belonging to the Corporation.

Apartment Sales

One of the Board's responsibilities is the supervision and approval of re-sales of apartments. Below is a checklist of the legal documents involved in the sale of a unit.

1. Contract of Sale. Entered into between the seller and purchaser, the contract of sale specifies the basic agreement between the parties: purchase price, when and where the closing or transfer of ownership will take place, financing arrangements, if any, and whether the contract is contingent on the purchaser obtaining a loan to buy the unit; what personal property and appliances will be included.

2. Consent of Board of Directors. The Board must pass a resolution accepting the new shareholder and consenting to the sale. A written consent to an assignment of the

proprietary lease and the shares of stock allocated to the unit is issued by the Board and presented at the closing.

3. Assignment of Proprietary Lease. This document is signed by the seller to transfer his interest in the proprietary lease to the purchaser.

4. Acceptance of Assignment. This document is signed by the purchaser to indicate his assumption of the seller's obligations under the proprietary lease.

5. Stock Power. This document is signed by the seller to transfer the shares allocated to his apartment to the purchaser.

6. Recognition Agreement. If a bank or other institution is lending money to the purchaser to buy the unit, the lender will request the Board to sign a document known as a recognition agreement. Under this agreement, the corporation recognizes that a lending institution will hold a security interest in the shares and proprietary lease. By signing the document, the Board agrees to notify the lender in the event the purchaser defaults under the proprietary lease, affording the lender an opportunity to cure the default to safeguard its security.

7. New Stock and Lease. The Corporation must issue a stock certificate and a proprietary lease in the name of the purchaser to be presented at the closing.