

Q&A: What are my rights for inheriting a co-op apartment?

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Q&A



Q. This is a very common age-old question in a cooperative. What are my rights for inheriting a co-op apartment if the unit owner unfortunately dies? If a unit owner is deceased and the property is turned over to the estate, what are rights of a relative, for example, let's say the apartment owner's siblings, to allow them to move in and take

actual possession? What happens if there is no will transferring ownership?

—Cooperative Hand-Me-Down

A. "There are several issues that have to be examined to determine who succeeds to the rights of a free market cooperative apartment," says Stephen M. Lasser, managing partner of the Manhattan-based law firm of Lasser Law Group.

"The first step is examining the deceased owner's stock certificate to determine if anyone else has an ownership interest in the stock (and appurtenant proprietary lease). If there are additional owners listed on the stock certificate, how the stock will be disposed of upon the death of one of the owners will depend on whether the stock is owned as tenants by the entirety (applies only to husbands and wives), joint-tenants with rights of survivor-ship or tenants-in-common. If the stock was owned as tenants by the entirety or joint-tenants with rights of survivor-ship, the surviving owner would take title to the stock, and the stock would not become part of the decedent's estate. If the stock was owned as tenants-in common, the decedent's interest in the stock would become part of the decedent's estate.

“Assuming the decedent owned the stock by himself or herself or as a tenant-in-common, the stock would have to be disposed of in accordance with the decedent’s will. If the decedent has no will, then a relative who would inherit the stock pursuant to New York’s intestacy law could file a petition with the Surrogate’s Court to be appointed the administrator of the estate. Once appointed by the Surrogate’s Court, the administrator of the estate can dispose of the stock in accordance with New York intestacy law. Generally speaking, New York intestacy law provides that the first \$50,000.00 worth of property is distributed to a surviving spouse and the remaining property is split between the surviving spouse and any children. If there is no surviving spouse, all of the property would pass to the children. If there is no surviving spouse or children, the next in line to inherit are the decedent’s parents followed by the decedent’s siblings.

“However, even if someone inherits an interest in a cooperative stock certificate and lease, that person may still have to get the permission of the cooperative corporation’s board to actually become a shareholder and occupy the apartment. This will depend on the language contained in the cooperative’s proprietary lease. Most proprietary leases do not require cooperative board consent to stock transfers to spouses. In addition, many proprietary leases prohibit boards from denying transfers to other enumerated family members, subject to other terms and conditions—typically that the proposed family member transferee is financially responsible and that he or she lived with the decedent for two years prior to death. As proprietary leases are updated, many are revised to broaden the definition of “family member” to include non-traditional relationships that are commonplace today. The terms of the decedent’s proprietary lease would have to be examined in order to accurately assess this issue.

“The individuals who inherit the stock and lease can also choose to sell them to an unrelated third party without taking title to the stock or occupying the apartment themselves. Such a transaction would be subject to the approval of the cooperative’s board.

“A final consideration is that if there is a mortgage against the stock and lease, the mortgage loan would have to be paid off at the time the ownership of the stock and lease is transferred.”