

Q&A: Right to the Deceased's Estate

BY STEPHEN M. LASSER, ESQ. 2010 JAN

Q&A



Q "If a unit owner is deceased, what are the inheritance rights of a relative, for example, let's say, siblings, to moving in and taking possession of an apartment?"

—*Legal Legacy*

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, an attorney shareholder in the Manhattan office of the law firm Stark & Stark. "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 survivorship or tenants-in-common. If the stock was owned as tenants by the entirety or joint-tenants with rights of survivorship, the surviving owner would take title to the stock, and the stock would not become part of the decedent's estate. If the stock were 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 worth of property is distributed to a surviving spouse and the remaining property is split between the surviving spouse and any children. If there were 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.”