

How NY Co-Ops Can Minimize Sale Rejections Based On Price

By **Pierre Debbas and Seth Feldman** (June 20, 2024)

Co-ops are private New York corporations and boards are empowered by Article 504 of New York's Business Corporation Law to pass judgment on the value of the consideration received for their shares.

In most cases, co-op boards are also empowered by their respective proprietary leases to "grant or withhold consent, for any reason or for no reason, to an assignment" to a buyer. Boards have fiduciary obligations to all shareholders to preserve value, and that means rejecting a proposed sale if the price is too low regardless of the buyer's qualifications.

But may a co-op board withhold pricing information from its shareholders? Probably not. While the BCL does not explicitly require a board to disclose any minimum pricing to all shareholders, it is preposterous to think such an omission provides boards with a right to secrecy.

Otherwise, those lucky members of the board have insider knowledge and a clear advantage over everyone else, not to mention the undue hardship caused to a shareholder who loses a sale because they didn't know they had an obligation to sell at a higher price.

Keeping shareholders in the dark is a clear-cut breach of a board's fiduciary obligations, especially the shareholder who is trying to sell.

And yet, a lot of boards do this, some on a regular basis, often for years, sometimes two or three times to the same shareholder. That is a lot of exposure.

The solution is transparency.

Here are two ways boards can get ahead of this problem.

Public Information

Publish minimum prices to the shareholders. This can be done generally or specifically and as often as the board may desire. Any shareholder who is thinking of selling will be able to easily find the lowest permitted price for their apartment before they list it for sale.

If a shareholder does not think they will be able to achieve the minimum price, then the shareholder can ask the board for a special dispensation, and the board can grant or deny that request for any or no reason. The point is that shareholder knows from the get-go.

Information Upon Request

Require or strongly encourage any shareholder desiring to sell to first request a minimum value from the board. Every building is different, and some may prefer to treat each apartment individually; this is true of most small co-ops with fewer than 20 apartments, which rarely see more than two or three sales per year.



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A shareholder can first inform the board, and the board in turn informs the shareholder of the minimum sales price it is willing to accept. Just as in Option 1, the discussion is had before the shareholder starts the process.

Selling for Less

Co-ops may be uncertain about how to handle requests to sell for less than the minimum price that they divulge. There are two possible approaches.

Answer 1: Deny

The board cannot be compelled to consent to any sale it feels will devalue all shares, even if that sale is for fair market value.

If, for example, the board determines that all two-bedroom apartments must sell for at least X, and a shareholder with a two-bedroom in need of a gut renovation is only able to sell for Y, the board has the right to stick with X as a minimum price.

The shareholder will need to either (1) find a buyer to pay X, even if it will require an offsetting concession that nets to a price of Y, and even if that limits the potential pool of buyers, or (2) perform the renovations to bring the apartment to a proper value in line with other two-bedrooms in the building.

The problem with this approach is that most shareholders in this situation are not in a financial position to perform the renovations, and limiting their buyer pool puts additional hardship on someone who is likely already under hardship. What's more, you are asking people to create a fictional sales price, which is then relied upon by other buyers and sellers in the market.

Answer 2: Approve

While a below-market sale could, potentially, for a time, devalue all shares, the board can deem the shareholder's circumstances more important than the potential for devaluation, and accept the reality of the apartment's market value.

The board may not feel comfortable demanding an inflated sales price, but at the same time you do not like seeing apartments get sold at low values. To mitigate the risk of devaluation, the board can require its transfer agent to record a one-page sundry document after the closing with the City Register. Call it a notice of price dispensation, if you will.

Make it public record that these particular shares were sold below the minimum price set by the board. The notice need not explain why the dispensation was granted, or even what the minimum price was, only that it happened. This way anyone who looks at the sale — like an appraiser, broker or a buyer willing to go beyond Zillow — will also see that it was not a typical sale.

Co-op apartments that sell for below what is typical in their buildings are most often owned by the elderly or estates; they are likely in need of renovations, or suffering from neglect.

It is in everyone's best interests to see these apartments sold to new owners who will improve them, and boards that prevent these apartments from being sold to qualified buyers do a disservice to all shareholders. Outdated and neglected apartments can quickly

develop arrears and safety issues for the co-op, and even spawn litigation, and those issues can devalue all shares in the building just as easily as a below market sale.

Conclusion

The above provides a co-op board with a transparent standard for influencing pricing in their buildings and gives their shareholders the information required to sell at an acceptable price. This upholds the board's fiduciary duty to all shareholders and reduces the risk of arbitrarily restrictive transferability.

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