

## Running the Gauntlet

### Understanding the Co-op Admission Process

By Elizabeth Lent

Talk about tense situations. There's the sweaty-palm inducing job interview or the anxiety-riddled prospect of getting down on one knee to propose. And who can forget those tense moments scratching out an answer on the SAT test, knowing your future hangs on the difference between answer A and B. Those moments, however, are all child's play when it comes to the pinnacle of the high-pressure situation: applying to live in a New York City co-op.

From Madonna to P. Diddy to the CEO down the street, every shareholder has experienced the fear of the co-op application process. Any number of things can keep a prospective buyer out of a building, from inadequate financial assets to a high-profile lifestyle that may be a bit too much for the neighbors. For boards, however, there are strict guidelines involved in acceptances and rejections, and with disgruntled applicants all too ready to call their lawyers, those boards are paying more attention than ever to the rules and regulations.

### The Do's and Don'ts

Last year, the Real Estate Board of New York (REBNY) joined with the Council of New York Cooperatives and Condominiums (CNYC) to produce a Co-op Board Admissions Guide. The guide outlines the basic application process and explains the anti-discrimination requirements that all boards must follow.

While the document reminds readers that "the right of the Board of Directors of a cooperative to allow or withhold consent from a sale, for any reason or for no reason, has been recognized and protected by the courts," it goes on to remind board members clearly that they must comply with the Federal Fair Housing Act, the Civil Rights Act and the New York State and New York City Human Rights Laws.

There also are 14 protected categories "under which claims can be brought against a New York City cooperative, either in the courts or before a city, state or federal administrative body if a prospective purchaser believes that a rejection was due to discrimination." Those categories include: age, alien status, children (or childless state), country of national origin, creed, disability, gender (including gender identity), lawful occupation, marital status, military status, partnership status, race, religion and sexual orientation. It is unlawful to discriminate or refuse to sell or rent to a person based on any of those 14 categories.

Beyond the categories and rights acts listed above, it is also illegal for the property owners to refer to any of those categories in any advertisements offering the property for sale. Boards cannot pretend that a unit is not available for viewing, sale or rental when it is in fact available, in an effort to discriminate against individuals in one or more of the protected categories. And finally, it is unlawful to assert that with the purchase or sale of any property, that there will be any physical deterioration of the dwellings in the area because of changes that may occur in the racial or religious composition of the neighborhood. For any right-minded board, all of the above should be completely obvious and not even enter into the equation.

The REBNY admissions guide also outlines the standard, step-by-step process for reviewing applications and interviewing prospective buyers. Marolyn Davenport of REBNY says that listing protected classes "alerts boards to what questions you just don't ask," while the outline "helps establish an application process that's fair across the board."

Helping streamline and ease the process is advantageous for everyone involved, from the applicant to the board to the entire real estate industry. “We wanted to make the process timely, to help board understand how they should respond to people and what to do with applications,” Davenport says. “We don’t want New York to be seen as a place where it’s impossible to buy real estate.”

## Getting the “Yes” Vote

Although every board must follow the rules, regulations and laws that bind them, it’s difficult to predict exactly what will make one set of shareholders say yes to one applicant and no to another. “Every board is different,” says Dianne Ramirez, president of Halstead Property in Manhattan. “Even in one building, a board can change regularly.” So what works one year might not work the next.

For the most part however, Ramirez says “A board looks at financial suitability because they have a fiduciary responsibility to the other shareholders. And they need to make sure the applicant fits the culture of the building. If it’s a relatively quiet, family-oriented building with lots of children, it may not be good for a celebrity or political figure who might need security.”

Being financially suitable for a building is far different from qualifying for a mortgage or a personal loan. Boards will look for assurance that the new residents also will be able to keep up with fees and taxes and still be able to maintain a lifestyle commensurate with everyone else. Barely scraping by and not being able to afford maintenance, renovations or furniture not made by IKEA is very unlikely to get a positive nod from the board.

“The majority of co-ops require anywhere from 20 percent down to 50 percent down with financing allowed for the balance,” says broker Meredith Fine of BP Vance Real Estate, Inc. in Manhattan. “Typically, the less financing allowed and the more down payment required, the tougher the board requirements.” Applicants need to show a sizeable savings and asset portfolio. “Often with the more difficult buildings, you need to show well above and beyond what would realistically be needed in liquid assets should you have the misfortune to lose your job and need to dip into your stocks or savings to pay your mortgage and maintenance.”

Beyond finance, fitting in with the building’s overall sensibility, as Ramirez states, can be the biggest stumbling block for the rich and famous. “There’s a real concern for the rest of the building,” she says. “Think, unfortunately, of John Lennon and the Dakota. That was the epitome of a worst-case scenario.” Specifically, Ramirez says, “There are concerns about paparazzi, about safety, about bodyguards who might be intimidating to other residents.” If, however, the applicant is a person of renown who has a reputation as a quiet individual, “then there’s usually no problem.”

## When Good Boards Go Bad

For board members engaged in the application review process, it is vital they remember that “every board is required to act in the best interest of the co-op,” says attorney Adam Leitman Bailey of the law firm of Adam Leitman Bailey PC in Manhattan. “They can’t act in the best interest of themselves or of one shareholder. They have to act on behalf of all the shareholders.”

When that does not happen, things can go terribly wrong. Earlier this year, Bailey represented an 83-year-old Holocaust survivor named Chaim Indig. Indig’s son-in-law attempted to purchase the \$412,500 co-op in Brooklyn, but the Indigs’ application was denied. Soon after the rejection, the apartment in question was purchased by the board president for himself. The Indigs and their son-in-law sued the board, alleging discrimination based on the fact that Chaim Indig is immobile and unable to speak due to Parkinson’s disease. They also sued for interference with contractual relations as a result of the board president’s efforts to terminate the contract of sale and buy the unit for himself.

Although a Brooklyn Supreme Court judge initially dismissed the discrimination claim and upheld the interference with contractual relations cause of action, the family prevailed on all issues on appeal and were able to purchase the co-op.

According to Bailey, the board in that case did not keep the interests of their fellow shareholders in mind when they made their initial decision. “It cost them more than \$100,000 in legal fees,” Bailey says. “They were on the TV news channels. The case made the front page of The Daily News. There was picketing outside. By not being careful, they cost themselves a lot of grief.”

## A Little Common Sense

As the old saying goes, an ounce of prevention is worth a pound of cure. That's certainly the case when it comes to co-op applications. "Take preventive measures," Bailey says. "It will save you a lot of trouble in the end."

Taking a long, hard look at a prospective buyer's financial statements before requesting an interview can help prevent problems later, Bailey says. If an applicant must be denied, doing it before the parties sit down to talk can decrease the chances that the rejected person will sue for discrimination based on race, creed, religion or any of the other protected class status.

Knowing the rules and regulations inside and out will help both parties, too. "The key to a successful application process is having a board with well thought-out procedures and a broker who understands the requirements," Davenport says.

And if there is ever a doubt about those rules and regulations, it never hurts to double check, Bailey says. Although the number of lawsuits that arise from application disputes is very low, the best way to prevent them is to nip things in the bud before they happen. "If you see there could be a potential problem, call your attorney to strategize on how to proceed to prevent litigation in the future. It's worth the money now to try to stop it from happening later," he says.

Boards also need to make sure that they attend to applications in a timely fashion. "When boards start taking too long to process an application, it can make the other party anxious," Ramirez says.

There needs to be a level of trust, too, in all facets of the exercise. "The reality is that there is an owner and a potential buyer," Ramirez says. "One has to move out, one wants to move in. There should be a sensitivity that this is a tense time for people."

As with any delicate situation, a little bit of communication goes a long way. "Be respectful and nice," Bailey says. "If board members act respectfully toward others, there will be fewer problems. One tactic I advise is for the board members to 'wear the shoes of the other party.' In other words, try to put yourself in the place of the applicant or shareholder. Be empathetic."

Being kind and fair from day one not only will make the process go more smoothly, it also will make for better neighbors later on. And that's always a good thing.

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