



## Cooperative Units – a Distinct Form of Ownership

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Cooperative units are prevalent in today's real estate market where they are attractive to the buyer as a low-maintenance form of ownership. Monthly maintenance fees for the units include water consumption, building maintenance, snow removal, landscaping, real estate taxes and payment of the underlying cooperative building mortgage. If the cooperative building has underlying mortgages, the payment of it will be reflected in the unit owner's monthly maintenance fee for his/her proportionate share in the building.

A "cooperative interest" is defined, as an ownership interest in a cooperative organization, which interest, when created, is coupled with possessory rights of a proprietary nature in identified physical space belonging to the cooperative organization. Therefore the cooperative interest represents a security interest into the shares of stock of the cooperative corporation allocable to that unit, and a "proprietary lease" which gives the right to the shareholder to lease that particular unit. This is in contrast to a condominium unit where the unit owner retains a percentage interest in and to the real property.

The process in obtaining a cooperative unit can be a lengthy one. Each cooperative building or project retains a managing agent, or is self managed in a small building, which attend to the administration of the project. The Board of Managers/Shareholders of the building vote on important issues pertaining to the building along with approving prospective shareholders into the building.. Should the board decide to embark upon a large project, such as changing all the windows in the building, the board will call a meeting to decide how the financing of this project should proceed and the shareholders will then vote on it.

Most often we are asked by the purchaser's attorney to perform a "Cooperative Apartment Lien Search" which searches the cooperative corporation and/or sponsor in an initial transfer, the seller, and the also purchaser of the unit if there will be a lender involved. Searches are made for judgments and liens that could attach to the shares of stock allocated to the unit. An important aspect of the search is to search for UCC filings to see if there is a security interest perfected and attached to the shares of stock.. The search will also provide information as to the outstanding mortgages on the building, which may explain why a particular building's monthly maintenance fee may be higher. It should be noted that there are companies that specialize in this type of search.

If requested we will provide a "TIRSA Leasehold Policy" to the lender, insuring that it has a valid lien, or the cooperative owner, insuring against an adverse matter which would attach or encumber the shares of stock. The Leasehold Policy provided is in a different form from standard fee and mortgage policies as it contains information for the unit and in relation to the building's fee interest. The title report is set up in the same way so that the prospective buyer can be alerted to possible problems in purchasing the unit, such as large unpaid water bills, numerous mechanic's liens, and judgments on the

cooperative corporation when it holds the fee interest or a ground lease in the real property. The title report will also provide information regarding judgments and liens as to the seller of the individual unit being purchased.

As a part of the policy, a TIRSA Cooperative Endorsement can be issued to provide additional protection for the unit owner and the lender. It insures that the cooperative corporation has been duly formed and has good title to the cooperative's land and building. It also insures that maintenance charges have been paid through the date of closing.

Transfers of cooperative units are subject to New York City and/or New York State transfer taxes, as well as to the New York State Mansion Tax in cases where the consideration is one million dollars or more. In those instances where leasehold title insurance is sought, the proposed insured also benefits from a title insurance perspective since the applicable rate is only 70% of the standard rate charged on policies involving real property.

A different form of policy currently being issued is an Eagle 9 UCC Cooperative Interest Insurance Policy for both buyers and lenders. There is currently one company approved to issue this form of policy. The Eagle 9 UCC buyer's policy provides coverage against loss or damage if a person, other than the insured, has rights in the cooperative interest, or if there is a perfected security interest filed by a secured party affecting any part of the cooperative interest, or if there is creditor's lien, including a federal or state tax lien, affecting any part of the cooperative interest, fraudulent transfers—transfers without the seller's knowledge, or transfers without a bankrupt seller having obtained bankruptcy court approval, along with other adverse claims of ownership.

It should be noted that individual cooperative unit sale's prices will now be available to be viewed on the ACRIS (Automated City Register Information System) website (<http://www.nyc.gov/html/dof/html/jump/acris.shtml>) for sales from July 2004 and after.

After review of the cooperative apartment lien search, the approval of the cooperative board, and the necessary paperwork done to prepare for the transfer of the unit, a closing will occur. The closing normally takes place at the managing agent's/transfer agent's office.