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Real Estate

Condos Tighten The Rules

By VIVIAN S. TOY

EVERYONE knows that buying a condominium in New York City is supposed to be much easier than buying a co-op. More expensive maybe, but definitely easier.

An advertisement for a condo is as likely to scream "No board approval!" as it is to advertise 12-foot ceilings or Sub-Zero appliances. And if co-op buyers have to run a gantlet before being approved, the biggest challenge in buying a condo has been having enough money.

But condo boards across the city in recent years have been honing and tightening the rules and requirements they impose on buyers, with many now behaving more and more like some of the city's most exclusive co-ops.

The practices that condos have adopted range from requiring extensive application packages that include a stack of reference letters and even a board interview, to strict house rules that ban open houses or limit pet ownership.

Property managers and lawyers who represent condos say that some are even talking about whether they could legally require board approval for apartment sales, a move that would eliminate what many buyers consider a condo's biggest appeal.

"Most of these buildings wouldn't have done these kinds of things before," said Richard Grossman, the director of downtown sales for Halstead Property. "But I think they are now because they want owners and buyers to take the process seriously, and even though it is a condo, they're not looking for it to be a free-for-all."

Brokers and property managers agree that most condos shift into a stage of tougher review and tighter management as a building and its board mature and the sponsor plays less of a role in the building's affairs.

"Whereas a developer will take anyone who puts cash down, the unit owners have a sense of community," Mr. Grossman said. "They don't want to stymie sales — they just want to have more control and help make the image of the building what they want it to be."

Historically, condos have cost more, partly because they had looser rules, and partly because of their scarcity. Although both are changing, the price differential between condos and co-ops has remained roughly the same. Nor has the shift toward co-op-style behavior so far seemed to affect condo prices. The average sales price for Manhattan condos in the first quarter of this year was \$1.45 million, 28 percent more than the average sales price for co-ops, which was \$1.13 million, according to sales data from Prudential Douglas Elliman.

Dozens of new condo buildings have opened recently or will open in the next few years, so more condo boards will soon be grappling with identity issues. "A lot of new development has happened in the last year or two," said Sharon Held, a senior vice president at the Corcoran Group, "and these boards are just really coming into their own." The tighter procedures can be an unpleasant surprise for buyers and sellers, especially foreign investors who are not accustomed to this type of scrutiny.

Dorothy Somekh, a senior vice president at Halstead Property, said she had recently represented a couple from Brazil who were so appalled by a condo's seemingly endless stream of requests for information that "they said they would sue the management company if they had the time because they had no right to dig that deeply into their affairs."

The couple eventually paid cash for two apartments in the building, near Lincoln Center, but the sale was complicated by the fact that they had put the sale under a corporate name. "It went on for weeks, with the board wanting all kinds of proof and minuscule detail about the corporation and its shareholders," Ms. Somekh said. "They were acting like the most difficult co-op board you'd ever seen."

Board packages vary from building to building, but the types of things that stricter condo boards require include two to three years of tax returns, pay stubs, two or more personal reference letters, and letters from previous landlords and financial institutions.

Amy Rea, a sales associate at Halstead Property, said that one Upper West Side condo where she recently brokered a deal required the buyer's photo identification

Boards can no longer afford to exercise their rights of first refusal.

and his Social Security card. "How many people carry their Social Security cards around in their pockets?" she said. "My buyer felt this was almost like harassment."

But condo board members argue they are merely trying to make sure that prospective buyers are who they say they are and can really afford to live in their buildings.

Robert Cubitto, the president of a condo board in Turtle Bay, on the East Side of Manhattan, wrote in an e-mail message that his board asks for "extensive information about a buyer's finances, employment and personal history," and that "we believe that what we require is simply what is necessary to do what we are required to do under our bylaws."

He added that the board had heightened its requirements "partly in response to the mistaken notion that condos were an 'anything goes' form of ownership."

Many condo boards instituted stricter policies after Sept. 11, 2001. Mitchel Askinas, a broker with Warburg Realty and a board member at the Oxford on East 72nd Street, said that since then, his building's board package has come to "smell and look like a co-op package, short of the interview."

"You have to worry about the security of the building," Mr. Askinas said, "and you really have to know who you're bringing into



Hiroko Masulke for The New York Times

CHANGES Barry Schneider served on the board at the St. Tropez, a condo on East 64th Street, in the 1990s. Antonio del Rosario, right, owns 16 rental properties and says that some buildings are prolonging the rental application process.

the building."

Other boards have instituted changes in reaction to specific cases that involved what they deemed to be problem buyers. David Kuperberg, the president of Cooper Square Realty, which manages 150 buildings in the city, said that one building's experience with a man who turned out to be a convicted child molester had prompted his company to urge all its buildings to run a criminal background check on every adult in a proposed purchase.

He said that the case involved a woman who said she planned to move into a building with her adult son, but the son, the convicted molester, was the only one to move in. "You can imagine how the people in the building, which is made up predominantly of families with children, felt when they discovered this," Mr. Kuperberg said.

Cooper Realty helped to negotiate a deal to buy the apartment back, with the other unit owners agreeing to raise the money needed to make the purchase, and then later resold it.

Still other buildings have adopted stricter policies because they want to discourage investors from buying and then renting out apartments. Condos have traditionally allowed sublets, while co-ops have generally set strict limits on them.

"There are some buildings that want to encourage more owner occupants," said Barak Dunayer, the president of Barak Realty, "because the feeling is that investors bring the value of a building down, while owners have a better interest in taking care of the building."

In one example in which an investor's plans ran counter to a building's vision for itself, Michael Kovner, a broker with Brown Harris Stevens, said that his condo building, at 923 Fifth Avenue, had recently strengthened its application process after a corporation tried to use an apartment as a high-end time-share hotel. The condo board was able to force the corporation to resell the apartment on the ground that it had bought it under false pretenses, because it was not using the apartment as a residence but as a commercial venture.

"Some people may be discouraged when



Tina Fineberg for The New York Times

What Exactly Is a Condop?

PEOPLE often wonder what exactly a condop is.

A common misconception is that it's a co-op that operates with condominium rules. But lawyers say that legally a condop has nothing to do with whether a building requires a board interview or allows rentals.

"A co-op with condo rules is not a condop," said Jeff Reich, a real estate lawyer. A true condop, he said, is a condominium building that has separate commercial and residential units, with the residential units controlled by a co-op corporation. The separate commercial units are typically retained or sold separately by the developer and can include

retail space, office space and a parking garage.

Mr. Reich said that condops were first created in the early 1960s, when New Yorkers were still wary of the concept of residential condos, but developers wanted to divest the residential parts of their buildings while retaining or separately divesting the commercial parts. "It happened because traditionally this was a co-op town," he said.

According to a survey of New York City apartment buildings commissioned by the Council of New York Cooperatives and Condominiums in 2005, the city has roughly 6,700 co-op buildings, 2,300 condos and fewer than 300 condops.

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they see this huge board package," Mr. Kovner said. "But in a sense it's the best you can do to make sure that people are not going to be using an apartment as a business."

One of the fundamental differences between condos and co-ops is that while a condo is real property, with the owner holding and being able to transfer a deed, co-op buyers own only shares in the corporation that owns the building. This gives the co-op board much more power over the transfer of shares to a new buyer.

While condo boards cannot stop an owner from selling an apartment, they are given the right of first refusal to buy the apartment back at the price that the owner has negotiated with the prospective buyer. But condos very rarely exercise that right since it would require the board to raise enough money to cover the transaction. And before exercising the right of first refusal, most condos also require the board to get approval from two-thirds of the unit owners, another daunting task.

The board at the St. Tropez on East 64th Street, the first high-rise in the state to be built as a condominium, in 1964, did exercise its right of first refusal a few times in the early 1990s, according to Barry Schneider, who has lived in the building since it opened and served on the board in the 1990s.

"In those days," he said, "apartments

may have gone for \$300,000 or less, and we were confident that we could resell them." But two-bedroom apartments now sell for as much as \$1.795 million.

Cathy Gursky, a Bellmarc broker who also lives in the St. Tropez, said that the building's application hurdles turn off investors who want to sublet their apartments, and as a result, only about 20 out of 300 apartments are rentals. "It might take longer, though, to sell an apartment because you have to get the right buyer," she said.

Many condo boards use their right of first refusal and an extensive board package in tandem to discourage buyers they don't want in their buildings. Boards are generally given 20 or 30 days in which to exercise their right of first refusal, but the clock restarts at zero with each new request for additional information.

"More and more, condos are not afraid to ask for additional information, and when they do that, they can keep the applicant guessing for quite a while," said Paul Gottsegen, the director of the Halstead Management Company.

Some condo boards have started considering whether it would be legal to require board approval for sales. "But I think at this point, it's mostly talk," said Howard Schechter, a lawyer who represents about 160 apartment buildings in the city, "because

the rising market selects the people who can afford to live in these buildings. If the market turned and people started defaulting, then there may be more interest in restrictions and people saying, 'Wouldn't it be great if we could just keep these people out in the first place?' "

Two other areas in which condos are borrowing from co-op handbooks involve building reserve funds and rental policies.

Some buildings have voted to impose transfer fees, also called flip taxes — a percentage of the sale price or of profits that must be paid to the building board whenever an apartment is sold.

A co-op flip tax is usually 2 or 3 percent of the sale price, but condos' transfer fees are more variable, with some buildings setting a specific dollar amount, or charging a percentage of the sale price or of the profits on the sale.

Flip taxes have been used in co-ops for decades, but many condos are just now considering them, mainly because condominiums are a relatively recent phenomenon in New York and so the buildings are only now reaching the point when renovation work is needed.

"A transfer fee is not the easiest thing in the world to get approved," said Stuart M. Saft, a real estate lawyer and the chairman of the Council of New York Cooperatives and Condominiums. "But right after or during a major assessment, unit owners tend to be more interested in doing it to avoid another assessment. It's the difference between paying now or putting it off until you sell your apartment."

Condos have taken another page from co-op bylaws. Buyers and investors who aren't interested in sharing their tax returns or other personal information may be asked to put as much as two years' worth of monthly common charges into an escrow account. And for a condo with a common charge of \$1,000 a month, that would mean coming up with an extra \$24,000.

"If a package shows no income or assets, in return for not showing things, buildings are asking and getting common-charge escrows," said John Janangelo, the president of Bellmarc Property Management. "The buildings are just trying to protect the other unit owners from adverse financial consequences or getting someone undesirable moving into the building."

In terms of rentals, most condos have yet to restrict them the way co-ops do — typically allowing owners to rent their apartments for only two years at a time — but many condos have developed other methods to discourage rentals. A few buildings require owners to live in their apartments for at least two years before renting them out.

In addition to requiring rigorous application packages, many buildings charge a variety of fees that can add a few thousand dollars to every rental. The extra charges can include fees for the application, for a credit check, for moving in and moving out.

Antonio del Rosario, the managing director at Barak Realty and an investor who owns 16 properties that he rents out, said that the rental application process at one of the buildings, 301 East 79th, had taken more than a month and that his renter had had to sit for a board interview and pay hefty fees. "I rarely get scared in terms of my investment properties, but this time I was very concerned: 'What if I can't get anybody to rent this?'" he said.

As a board member at the co-op where he lives, Mr. del Rosario says he understands and appreciates these kinds of hurdles, "but as an investor, it might protect my investment, but the bad part is: time is money, and time can kill deals."