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Lessons from Habitat's Legal Talk Series

## Navigating Co-op Trust Transfers

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Transferring a co-op apartment to a trust is a complex process with legal, financial and administrative implications. The primary reason co-op shareholders consider transferring their units into trusts is for estate planning. This has evolved over time, with people seeking alternatives to the time-consuming and expensive probate process; revocable trusts, which can be changed, are a popular choice. However, transferring an apartment to a trust in a co-op setting is not as straightforward as it might seem.

A board's role in trust transfers. Boards should approach trust requests with care, considering the unique circumstances of each shareholder. While co-ops should not interfere in personal planning decisions, they should protect their financial interests by ensuring the continued payment of maintenance fees. Historically, co-ops have been hesitant to grant trust transfer requests due to a lack of understanding and concerns related to the Internal Revenue Code. However, with changing laws and a better understanding of trusts, it has become exceedingly rare for co-ops to deny such requests.

Understanding the process. Most co-op proprietary leases require board approval for virtually all transfers. A transfer to a surviving spouse might be the exception. A shareholder intending to move his or her apartment into a trust should start by reviewing the proprietary lease, and then initiate the process by reaching out to the board or management. This step is crucial to start the discussion and understand the specific requirements and procedures for trust transfers. From the co-op's perspective, a trust transfer is considered a property transfer — akin to selling an apartment — that can have implications for the co-op's ability to collect monthly maintenance fees. To address this concern, co-ops may request a personal guarantee of maintenance payment from the original shareholder, ensuring that the co-op's financial interests are safeguarded.

Associated costs. The co-op's attorney will review the trust document — and may request amendments — as well as review the existing proprietary lease and share certificate, and prepare the conditional transfer consent and the individual personal guarantee. The legal and administrative fees are typically the responsibility of the shareholder making the request. Shareholders often inquire about property tax abatements in New York. In the case of a revocable trust, the shareholder can still benefit from the abatement. However, if the property is held by a different entity, like a limited liability company, the tax department may not grant the abatement.

Trusts and inheritance. In the event of the original shareholder's death, transferring the apartment to a beneficiary can be complex. It depends on the proprietary lease and the terms outlined in the conditional consent agreement signed during the trust transfer process. Board approval may be required for a beneficiary to move in, which allows the board to ensure that the person can meet all financial obligations. If board approval is not given to the beneficiary, then the apartment has to be sold.