

ASK REAL ESTATE

Can I Leave My Co-Op to All Three of My Children?

Passing a co-op to a family member is possible, but with multiple children, it can be a little more complicated.



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By **Matt Yan**

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Q: I own a small co-op apartment on the Upper West Side, which I've had for a decade and use as a pied-à-terre. I would like to pass it on to my three children when I die and have them work out what they want to do with it, though I know the co-op must approve new owners. Can I legally leave the apartment to all of them, and is it a bad idea to name all three of my children as owners of the unit in my will?

A: You can certainly leave the apartment to your children in your will, but they will still need the co-op board's approval to own it, and that approval is by no means guaranteed. Rules can vary based on a building's proprietary lease, which governs the relationship between the co-op and its shareholders.

In the event of a shareholder's death, most proprietary leases have clauses that indicate how to handle the property transfer to a family member. Transfers to a spouse often do not require approval from the board, said William J. Geller, a real estate attorney at Braverman Greenspun, who has also served as president of a co-op board. For others, the proprietary lease may specify that the board won't unreasonably deny a transfer to a financially responsible family member.

"The general rule is that the co-op board has the right to approve or deny a sale for any reason — good, bad or otherwise — except for a legally prohibited reason, such as discrimination on the basis of race, nationality or other protected class," Mr. Geller said.

In this case, naming all of your children as co-owners of the unit might not be the wisest idea. The board may hesitate to approve three new owners because it would mean three different people with occupancy rights, said Robert Steele, a partner and chair of the trust and estate department at the law firm Schwartz Sladkus Reich Greenberg Atlas.

"While it's theoretically possible, I think it would be very unusual for a co-op board to allow three separate owners, all of whom have occupancy rights to bring in their children and whatever," Mr. Steele said.

If they don't get board approval, your children could sell the apartment and split the equity. However, you may want to spare them the trouble and any potential bad blood, sell it now, and disburse the profits yourself.