

Memorandum

To: Cooperative and Condominium Directors and Managers

From: BPBMV Cooperative/Condominium Practice Group

Subject: Transfer on Death Designation

Date: February 15, 2007

A provision was recently added to New York's Estates, Powers and Trusts Law which may affect the ownership of cooperative apartments. Under the revised statute, transfer on death ("TOD") designations may now be used for securities in New York State. These permit the owner of stock to designate a beneficiary on the stock registration so, that upon the death of the stockholder, the stock automatically transfers to the designated beneficiary without the expense and delay of a probate proceeding. The same result could be obtained previously by designating an individual as a "joint tenant", but a joint tenant is a co-owner of the property during the decedent's lifetime while a person benefitting from a TOD is not.

Although the statute does not refer to shares in a cooperative apartment and the legislative history is silent on the topic, we expect that purchasers and owners of cooperative apartments in some cases will seek to use the new designation.

Be aware that the statute does not require the registering entity (*i.e.* in the case of a cooperative, the apartment corporation) to offer or accept a request for the TOD designation. Therefore, even if the statute were applicable to cooperative stock, a cooperative is not required to accept a request for a TOD designation. This is the course that we expect most cooperatives to take since in most cases they will wish to retain the controls over the transfers on the death of shareholders that are contained in their proprietary lease.

The transfer on death provisions in proprietary leases vary among cooperatives, although there are several basic variations. If you would like us to review these provisions in your current proprietary lease, please call us.

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