

An Estate-Planning Primer

By Ronald A. Sher, Partner, Himmelfarb & Sher

Estate-planning primer: do you know what type of owner you are? The answer can spare you headaches. Boards should contact shareholders/unit-owners to facilitate the review of their stock certificates and proprietary leases or their deeds to determine the specific type of title ownership that is designated. This is a simple task and needs to be performed now, because many who purchased their apartments before January 1, 1996 may be under the mistaken impression or unfortunate misconception that they own their respective cooperative units, without the proper title designation, of either (i) joint tenants with rights of survivorship (JTWRS); or (ii) tenants by the entirety (TEN ENTS). These two designations permit married couples to pass their respective ownership interest in the apartment by operation of law, both without the need for probate and with certain inherent protections from creditors of the decedent.

We are constantly faced with the problem that either the people involved in these situations (a) are unaware or uninformed, (b) did not make the necessary inquiry, and/or (c) incorrectly presumed the type of ownership. They never realized the significance of date of purchase or simply did not look at the stock certificate before the closing. We require that all sellers submit the same in advance of a closing, so that we can ensure the enabling power of the surviving spouse to sign the transfer documents and validity of the transfer or sale.

We have found that many shareholders and unit-owners who purchased their apartments before 1996 – when the law changed the presumption of ownership in favor of marriage or married persons – are unaware of how they hold title or simply presume they have rights of survivorship and title passed by operation of law at the time of death of their decedent spouse. Accordingly, any married couple that purchased after January 1, 1996, in the absence of a title designation, is presumed to hold title as JTWRS, TEN ENT, or as husband and wife, with all rights of survivorship benefits and protection from creditors.

What should a board do to help shareholders and unit-owners obtain peace of mind? First, send a letter to all owners suggesting that they look at their stock certificate or deed, especially if they acquired the apartment prior to 1996, to determine if the correct title designation appears on the shares of stock or deed for JTWRS, TEN ENT, or H&W. Then, recommend they check with their personal or estate lawyer, transfer agent, or managing agent to ascertain the proper procedure to change the title designation. This simple exercise can save you time, avoid the necessity to probate, and avert unnecessary legal expenses, especially if both spouses are still alive and can facilitate the expeditious appointment of an executor.