

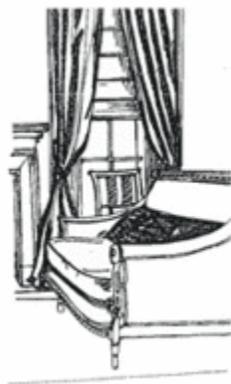


From the Law Office of Ronald H. Gitter, Esq.

Addressing the Realities of Residential Real Estate

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How To Avoid a Board Turn Down



The Vertical Country Club

Although Groucho didn't want to belong to any club that would have him as a member, in Manhattan, the opposite is true: there are co-ops out there that don't want you even though you want them. Getting approved by a co-op's Board of Directors is as New York as the Statue of Liberty. It is a vestigial initiation rite which complicates the apartment purchasing process and always ratchets up the anxiety level. For the uninitiated, here's what we're talking

about.

The Power To Just Say No

As you may know, when purchasing a cooperative apartment (with some exceptions as mentioned below), even though you've got the bucks to purchase the apartment, you still have to be approved by the co-op's board of directors. The co-op board is a group of 6 to 8 tenant-shareholders who reside in the co-op and who are elected by the residents of the co-op to manage the affairs of the co-op. As a part of those duties, the co-op board is responsible for reviewing the purchase applications of all prospective purchasers in each co-op. Unlike a condominium, where the board of managers can only exercise a *right of first refusal* to purchase the unit from the seller on the same terms offered to the prospective purchaser, a co-op board has the power (as granted by the co-op's by-laws and proprietary lease) to flat out turn down a proposed buyer.

What's Behind the Approval Process

The approval process originated as a means to screen out the socially unacceptable from the Park Avenue and Fifth Avenue buildings. It created an air of exclusivity which in turn, made the real estate more expensive. When this concept first came into play in the twenties and thirties, there might have been hundreds of apartments involved in the screening process. Now there are tens of thousands of co-op units all over the five boroughs. Except for those buildings where financial wherewithal is a given and social acceptability is the real issue, most coops screen potential buyers for financial ability to meet one's

obligations to the co-op. Nevertheless, non-financial issues often creep into the board approval process. Although most people who submit purchase applications get approved, board "turn downs" happen all the time. Here are some suggestions to make sure you don't find yourself on the other end of a dreaded telephone call:

Know What You're Getting Yourself Into

When it comes to knowing the skinny on Manhattan co-ops, unless you know someone who lives in the building in question, the best way to find out information on a co-op is through a knowledgeable real estate broker. There are pros out there who know the nuances of the hundreds of buildings that require board approval. And there are hundreds. Although almost all new construction is condominium home ownership, cooperatives still make up over 80% percent of the market. Accordingly, finding a broker who knows his or her stuff is imperative to avoid disappointment and costly delays. If you don't have the financial wherewithal for a particular building, don't waste your time. Further, make sure the broker knows the neighborhood you're interested in. Don't work with an east side broker when you're looking for an apartment on the west side. So here's the first Rule:

Make Sure You're Working With A Knowledgeable Real Estate Broker
Who Has Experience with the New York Neighborhood You're Interested In

The Board Package

You followed rule one and you've signed a purchase contract on an apartment that meets your needs. Once you have received back a fully-executed copy of your purchase contract, you will have ten business days to submit a "*Board Package*" to the managing agent for the cooperative. If the transaction is "subject to financing", the Board package will have to be submitted three business days after the loan commitment letter is issued by your bank. The Board package consists of a standard form of purchase application which most Boards use to collect basic information about your business and personal life (and that of your spouse); authorization for a credit check; various disclosures about the co-op (for example, a board package might contain a notice that all purchasers are required to replace the windows in their apartment or pay an upcoming assessment); a financial statement (usually consisting of a balance sheet and income statement); a request for business and personal references; a request for an application fee; a lead-based paint disclosure if the building was constructed before 1978; and various other documents or board requirements. In most cases, the real estate broker who helped you find the apartment will help you put together your board package together. The broker will review all the information as it comes in and, in many cases, will make suggestions to help you present your information in the best light. The process can border on the absurd and can be unbearably time consuming, but there's no way to avoid the approval process unless you buy an apartment in a condominium (that being said, condos have extensive Board packages as well, but no real rejection

rights). Take the process seriously and try to put together the best presentation that you can. It will be reviewed by all of the Board members and will be used to determine whether the board will schedule an interview with you. Boards have the power to turn down a prospective purchaser without an interview if they don't like the board package. It's serious business. A bunch of strangers sitting around a dining room table, looking over your purchase application, can make your life miserable. Listen to what your broker suggests and do what's asked of you...within reason. Rule Number 2:

Don't Misstate Your Financial Condition

There will always be a fudge factor in business and personal matters. Presenting yourself in the best light is expected and appropriate. Nevertheless, if you overstate your assets or income, there is always a possibility that the managing agent representative or one of the bean counters on the co-op board (and there is always at least one) will figure out that you are cooking the books. When that happens, you will not only run the risk of getting turned down by the co-op board, but you will also run the risk of losing your contract deposit by submitting a board package in bad faith (that is, lying about your financial condition). Your best line of defense is to question your real estate broker thoroughly as to what the financial requirements are of the co-op you're interested in. If the building requires a liquid net worth equal to twice the purchase price and you only have a liquid net worth equal to one and a half times the purchase price (sort of), you're probably looking at the wrong building. In most cases, the broker will give you the third degree to determine which properties should be shown to you based upon your financial condition. It's one of those situations where you should be completely honest about your financial condition with a total stranger. Most of us wouldn't tell a close friend what our real numbers are, but with co-op purchases, you have no choice. Let the broker know what your situation is and never try to outsmart the board with creative accounting. As I have seen over and over, it just won't work.

Google Yourself, As Someone on the Board Will

There is no real privacy any more, thanks to the Internet. As a part of the application process, it is wise to "Google" yourself and see what comes up. In the world we live in today, someone on the Board will. If there is anything out there that is embarrassing or needs to be explained, better you know about it before the application goes in.

Preparation of the Business and Personal References

As a part of almost all board packages, the purchaser will be required to submit several business and personal references (as many as three each). Make sure that you select individuals who you are comfortable can fashion an intelligently written and strongly supportive letter for your application. Work with your broker and make sure that the letters you've assembled are impressive. This is

not the time to submit a letter from your kindergarten teacher. Boards take this stuff seriously. A lax attitude about the letters can be costly if you are submitting a marginal financial package. Here is one of the last instances where neatness actually counts. Educate each person who is writing a letter as to what the purpose of the letter will be. Don't leave anything to the imagination. If you don't like the letter and can't get it redone, get another one from someone else.

Submit the Application in a Timely Manner

As mentioned above, the board package is due 10 business days after the contract is returned, unless the contract is subject to obtaining a mortgage commitment (all boards will require that you submit your loan commitment letter with your board package). If you are not getting financing, have your attorney try to get as much time as possible for you to submit your board package. A reference letter you need often can't be obtained within 10 business days because someone is unavailable. Accordingly, your requirement to meet the 10-day deadline should at least be qualified with "best efforts" language, so that you won't be penalized for a late package if the delay was beyond your control. If you are applying for financing, even though you will have additional time to submit your package, start working on the board package as soon as the contract comes back. There is no reason why a board package should not be ready to go as soon as the loan commitment letter comes in. Vince Lombardi is quoted as saying "if you're on time, you're ten minutes late." The same rule could apply to board packages. Get everything done even before it's due. If there is problem with any of your documentation, there will be plenty of time to correct it. Rule Number 3 about the Board package:

Treat the Board Package Like the College Application to Your Favorite School

The..."gulp"...Board Interview

Once the board has reviewed your financial information and has deemed it acceptable, an interview will be scheduled for you to meet either the entire board or an interview committee of the board. The interview should just be a *getting to know you* session once the financials have been reviewed, but sometimes it's more than that. It's social in nature, but it's an interview nonetheless. Do the best you can to present yourself in the best light. Again, check with your broker about any inside information he or she might have about this particular board and act accordingly. All of the above being said, there is an absurdity to it all. Just for grins, see Malcolm Carter's take on "[How to Spin a Board Interview](#)."

The Outer Limits of Board Authority

Boards have broad authority to turn someone down, provided the Board is acting in good faith and is making its decision within the bounds of the "business judgment rule". When a Board discriminates against a proposed

purchaser based on race, religion or sexual preference, a Board can be held liable for its discriminatory behavior. When discrimination occurs, Board members can be held personally liable for this offensive and illegal behavior. When you believe a board turn-down has occurred for inappropriate reasons, the entire matter should be carefully reviewed with your attorney to determine whether there are any remedies available to you as a result of what may be an improper and possibly illegal board turn-down. Boards can turn you down because they don't like your style, but they can't turn you down because of the color of your skin, your religion or your sexual preference.

Expect Delays

The application process is like flying home for Thanksgiving or July 4th-- expect delays. The application process is time consuming and is often off schedule. Many boards do not even meet in the summer. Precise timing requirements just don't work with the board approval process. In almost all cases, it will take longer than expected. There are some co-op boards that act like condos. They're often referred to as "*Condops*". In those buildings, the approval process is akin to a right of first refusal. I know at least one "condop" that doesn't even have Board interviews. If your financials are good, there is usually very little delay. Even with condos, however, delays are often encountered in obtaining the waiver of the board's right of first refusal. Industry-wide, no one can figure out why there is such an incredible lack of sensitivity to the timing problems we all have in buying an apartment. Didn't these people all go through the process themselves? Ask any broker, no one can figure it out.

Residential Reality: The Clock's Ticking

For those of you who are reading this and have just gotten your purchase contract back, have no fear. The vast majority of board applications are approved. For those of you who are new to the process, going through a Board application is a New York rite of passage. The country club thing is alive and well in Manhattan and it will never go away. Nevertheless, Boards should be encouraged to act reasonably and expeditiously. Remember, the person who waited 3 weeks for a board interview may turn out to be your new next door neighbor.

For more issues to consider when submitting your co-op purchase application, see "[Board Package Red Flags](#)."

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110 East 59th Street, 23rd Fl., New York, NY 10022 Tel: 212.826.2405

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