



November 2001

Combining Units

Trading Up to a Larger Home

BY ERIC GONCHAR

Several years ago, many co-op and condo owners who wanted to trade up to larger apartments were only able to sell their homes at a significant loss due to the downturn of the real estate market. Rather than suffer this substantial loss, some folks decided to stay put and purchase the adjoining apartment. Now, these lucky New Yorkers not only enjoy a larger space, they also can boast that they purchased the apartment next door at a fraction of the price it would be today.

As New York's aggressive real estate market forges on, there continue to

in purchasing an apartment for combination is whether the co-op or condo will allow the two units to be joined. For the purchaser who already owns one of the apartments in the building, the approval process may be easier since the unit owner can try to obtain board approval before signing a contract to purchase the adjoining unit. When the purchaser is buying two units in a building where they have no contact with the board of directors, it may be a difficult task to obtain the consent of the co-op or condo before signing a contract and closing on the apartments.

A purchaser's attorney should try

PHOTO BY RICH VOGEL



If you're having trouble finding an apartment with two or more bedrooms, an alternative is to combine two apartments.

be reasons for combining apartments. Those New Yorkers who can take advantage of the seller's market are often faced with a serious dilemma if they want to continue to live in the city. If they sell at an inflated price they will have to buy at an inflated price. Another consideration is that there are very few two bedroom or larger apartments on the market today. To combat these problems, many purchasers have either bought the adjoining apartment in the building where they currently live or purchased two adjoining small apartments in another building to combine into one large dwelling unit.

Obtaining Board Approval

One of the most important factors

to have the contracts contain a clause that makes the purchase of the apartment(s) contingent upon consent of the board of directors or managers to the combining of the units. The contract should also contain a clause, when purchasing two units simultaneously, that both units must close at the same time. If the contract is conditioned upon board consent, and if the co-op or condo board denies the combination after signing the contract, the purchaser can cancel the contract and obtain a refund of his down payment.

Many times a purchaser does not want to expend the monies to have

continued on page 35

COMBINING UNITS

continued from page 35

construction work to combine the units. In addition, some lenders charge a nominal fee of approximately \$150 to inspect the apartments once the units have been combined. It is wise for the purchaser to talk to the lender before signing a contract of sale to determine how much money will be held in escrow and what additional fees will be charged.

Building Department Approval

On November 3, 1991, the Building Department issued a new policy simplifying the process by which apartment owners obtain municipality approval when two or more apartments are combined. Unit owners were once required to amend the Certificate of Occupancy for the entire building to reduce the total number of legal dwelling units in the building. And, if there were any open violations and open work permits filed against the building, the Department would not issue an amended Certificate of Occupancy until the violations and permits were removed.

The new policy, which is less costly and time-consuming, allows the apartment owner to file an Alteration Type II application provided certain conditions are met. The combined apartments must be either on the same floor or on adjacent floors connected by an interior stairway connecting no more than two floors. The combined apartments must result in an equal or lower number of zoning rooms. And, natural light and air must be in compliance with Building Department regulations. Egress into the building cannot be altered as a result of the combination of the units. One of the kitchens must be eliminated, and plumbing and gas lines to the eliminated kitchen must be capped unless the plans and specifications indicate an alternative use of these connections for a washer/dryer, wet bar, new bathroom, etc.

If the apartments are located in a condo, a new tax lot number must be obtained from the New York City Department of Finance for the combined unit prior to filing the alteration application. When combining condo apartments, the Alteration Type II application must be signed by the unit owner. If co-op apartments are joined, the Alteration Type II application must be signed by an officer of the corporation.

The plans drawn by the architect must be examined by the Building Department, and depending upon the work that is to be performed, the Building Department may require certification from a licensed plumber or electrician that the work was completed in accordance with building codes. The Department will

almost always require an asbestos report. Under the new policy, the Building Department does not need to inspect the apartment.

When the Building Department has approved the completed work, it will issue a "Letter of Completion" stating that work was completed in accordance with the Building Department. If the application was an Alteration Type II, the Building Department does not require a new or amended Certificate of Occupancy for combining the apartments. According to licensed architect Robert Proffitt, a principal of Robert Proffitt Associates in Manhattan, who has handled dozens of apartment combinations, "The change in the Department of Building filing procedures has facilitated the process of combining apartments by eliminating the need for most

managing agent of the building to combine common charge bills on one invoice.

If the apartments are located in a co-op building, the owner may want to have one stock certificate and one proprietary lease issued reflecting the combined number of shares allocated to the combined apartment. If there is a loan secured by the co-op apartment, the owner may need to contact the lender to return the two stocks and leases so that one single stock and lease can be issued. A co-op will generally not issue one stock and one lease for a combined apartment until the Letter of Completion has been secured. It is not mandatory that one stock and lease be issued for the combined unit. Finally, as with the combined condo units, the managing agent may be contacted

plans and specifications drawn by an architect until they know that the co-op or condo will approve the combination. However some co-ops or condos do not want to approve the combination without reviewing plans and specifications of the proposed work. I have found that many boards will consent to the combination in "concept only" provided that, before the work starts, the plans and specifications are acceptable to the board's engineer and the purchaser supplies the board with the appropriate alteration agreement insurance certificates and copies of the contractor agreements. It may be wise to determine how much the building engineer, if any, will charge when reviewing the plans and specifications to combine the apartments.

Before you sign a contract, your architect must address three very important issues. Will the combination of the apartments flow together well? Are there any plumbing, venting entry or electrical risers that may have to be relocated as part of the combination? And are any of the walls to be removed load bearing? In order to budget the project correctly, it is prudent to obtain estimates from the architect for the costs associated with the preparation of the plans and specifications, supervision of the work, construction costs and expenses associated with obtaining Building Department approval.

Obtaining a Loan

Speak to your lender or mortgage broker prior to signing a contract of sale to determine if he will make a loan for two apartments not yet combined. If the loan is made when both units are being purchased simultaneously, the lender will fund the loan on the day of closing. If the loan is made when one unit is owned and the other is being purchased, the lender will generally treat the transaction as a refinance and the loan will not fund until three business days have passed. Accordingly, if a loan on the previously owned agreement is being satisfied with the proceeds of a new loan to be secured against both apartments, the purchase of the second apartment must take place three business days later when the proceeds of the new loan become available.

All lenders who make a loan against two apartments that have not been combined will hold money in escrow pending completion of the work associated with the combination of the apartments. The general practice is to hold the larger of \$10,000 or one and one-half times the cost of the



PHOTO BY RICH VOGEL

Before you purchase an apartment for combination, you need to find out if the board will allow two units to be joined.

inspections and the removal of violations and other obstacles. Before this change, the city treated the combination of apartments in the same way as an addition to an existing building."

The Final Steps

Upon the issuance of the Letter of Completion, there may be several final steps, depending upon the type of apartment. If the apartments are located in a condo, the real estate tax assessors office should issue a single tax lot for both units. Accordingly, there will be only one real estate tax bill for both units. In addition, the owner may want to contact the

to combine the co-op's two maintenance charges into one monthly bill.

While the time and research involved to combine apartments may be significant, the overall result is generally less expensive than buying a single larger apartment. And in today's tight market, it may be the only way to find the space you need. ■

Mr. Gonchar, a partner with the Manhattan law firm Kane Kessler, PC, has handled numerous unit combinations including his own. He sits on the board of directors of his Manhattan co-op.