

# NEW YORK COOPERATIVES

## "DO THEY QUALIFY FOR §1031 TAX DEFERRED EXCHANGES?"



### Compliments of

### WHAT IS A NEW YORK CO-OP?

The New York cooperative or "co-op" was originally conceived in the late 1800s to entice home owners to live on top of each other instead of side by side. The co-op is founded upon the idea of a private social club. Co-op owners, through a board of directors, are entitled to choose their own neighbors, provided that federal and state discrimination statutes are not violated. When buying into a co-op, the taxpayer is buying a long-term lease and the right to exclusive possession of an apartment for an indefinite period. The co-op board acts very much like a landlord and the taxpayer is entitled to demand from the board the same services and attention they expect in a rental building. The co-op board bills the taxpayer every month for a pro-rated share of the total cost of running the building, which usually including the monthly costs of a mortgage on the entire building. The taxpayer pays this monthly bill, called maintenance, in addition to any bank loan they may have obtained to purchase the apartment.

### IS A CO-OP CONSIDERED REAL PROPERTY?

In support of the premise that an interest in a co-op apartment may be considered real property in New York are the following statutes and a case cite:

- CPLR §5206: Provides a homestead exemption from creditors.
- §2402(5): Provides that a "mortgage" includes a loan by a bank to purchase stock in a co-op corporation.
- §254-b: Limits late charges on loan secured by co-ops.
- §279(5): Allows the issuance of mortgage loans for financing the co-op ownership of real estate.
- In the Shor ruling (Shor, 43 N.Y. 2d. At 158), the Court of Appeals, for most purposes, treated an interest in a co-op as an interest in real property.

The IRS also allows taxpayers who own co-ops to take a tax deduction for their proportionate share of the real estate taxes allowed as a deduction to the corporation. In summary, there are many tax and legal advisors who believe there is strong legal authority to support that a co-op contains sufficient real property identity to be considered real property for §1031 exchange purposes.

In Letter Ruling 200137032, the IRS ruled that the conversion of ownership in a co-op for a condominium in the same building qualified for a §1031 exchange. The IRS viewed the interest in the co-op as a tenant with a lease of more than 30 years and the condominium as both real property interests.

For more information, please contact Asset Preservation, inc. at 800-282-1031 or 866-394-1031.



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