

## WHO OWNS THE APARTMENT? - DEALING WITH SPOUSES, CHILDREN AND ROOMMATES

As a shareholder in a corporation that owns a building, you are entitled to two documents: a Share Certificate and a Proprietary Lease. If you put another name with yours on these documents, the effect can be significant. READ ON FOR SOME GENERAL ADVICE....

### I. **The Share Certificate and the Proprietary Lease grant different, though related, rights.**

- A. Your **Share Certificate** is evidence of your ownership of a portion of the Corporation which owns the building (it does not mean that you own your particular apartment). The Shares have a money value and entitle you:
  - 1. to elect the Board of Directors and to vote on certain corporation matters; and
  - 2. to lease an apartment in the building owned by the Corporation. All of your Shares are represented on the Share Certificate. Ownership of all of the Shares allocated to your apartment is necessary to the right to hold the lease and to occupy the apartment. The Shares are personal property and not real estate.
- B. The **Proprietary Lease** entitles the Share owner(s) to occupy a specific apartment in the building, according to the terms of the Proprietary Lease and the House Rules. The Lease, like any other rental agreement, does not signify ownership of the apartment. (However, the term of the Lease is longer than most; it lasts 99 years unless it is violated by the Lessee.)
- C. **It is important that the same name(s) appear on both the Share Certificate and the Proprietary Lease.** Note that all Lessees are responsible for Lessee obligations.

### II. **There are three types of Share ownership.**

- A. **Individual Ownership.** One person's name appears on the Share Certificate. That person owns all of the Shares.
- B. **Tenancy in Common.** Two\* names appear on the Share Certificate (there is only one Share Certificate). Each person owns half of the Shares; together they own all of the Shares. If one person dies, the other Tenant in Common does not receive the deceased's Shares automatically. They will go to the deceased person's heirs.
- C. **Joint Tenancy with Right of Survivorship.** Two\* names appear on the Share Certificate, along with the letters J.T.W.R.O.S. (Again, there is only one Share Certificate). **Both** persons own **all** of the Shares, and when one of them dies, the survivor automatically owns all of the Shares him/herself.

III. In deciding how you will complete your Share Certificate and Proprietary Lease, you should consider both your present situation and the future. Here are some frequent situations and how they may be handled.

- A. **If you are married and want to be sure your spouse will retain all rights to the Shares and Lease should you die:**
  - 1. You should put both names on the Share Certificate and the Lease and add "J.T.W.R.O.S.". This means that upon the death of one, the other automatically owns all of the Shares and

has the right to hold the lease and to occupy the apartment.

2. If you put both names on the Share Certificate and Lease but you do not write "J.T.W.R.O.S.", a Tenancy in Common will result. The deceased spouse's half of the Shares **may** go to the surviving spouse, but this may not be guaranteed. Here, if you have **wills**, you may specify that your Shares go to the surviving spouse. However, if there is no will and there are children, some of the deceased's Shares may go to them. This is acceptable as long as the children are living in the apartment with the surviving spouse. If they are not or if they move out, there could be problem with Share ownership even though the spouse generally will be allowed under the Lease to stay in the apartment. Remember that ownership of all of the Shares is necessary to the right to occupy the apartment under the Lease.
3. If only one name is put on the Share Certificate and Lease, and that person dies, the surviving spouse may or may not get all of the Shares if there is no will and there are children. Although the spouse's right to stay in the apartment is fixed in most Proprietary Leases, there may be complications and delays in the spouse's acquisition of all of the Shares from the persons to whom they have been granted.

**B. If you have children whom you want to receive the value of your Shares should you die:**

1. You may specifically leave the shares, or any number of them, to your children by will. If you leave no will and have no spouse, your children will each get an equal number of shares. If you leave no will and you have a spouse and children, all may get some number of Shares. For children, share ownership does **not** guarantee the right to occupy the apartment under most Proprietary Leases, but the Board of Directors is obligated to pay the owner the value of his or her shares if it is determined that he or she will not be occupying the apartment.

**C. If you are living with anyone who is not your spouse (e.g., parent, brother, sister, child, non-relative) and you want that person to retain occupancy of the apartment should you die:**

1. Put both names on the Share Certificate and Lease with "J.T.W.R.O.S.". This means that upon your death, the person you are living with automatically owns all of the Shares and has exclusive rights to hold the Lease and to occupy the apartment. (Note that these rights **always** depend upon compliance with all the terms of the Proprietary Lease, including the continued payment of rent.)
2. If you put both names on the Share Certificate and the Lease but you do not write "J.T.W.R.O.S.," and you do not specify by will that the desired person will inherit your shares, someone else may inherit your shares and there could be problems for the desired person acquiring all the shares and remaining in the apartment.
3. If you put only one name on the Share Certificate and Lease, the other person will own no shares and will have no immediate right to occupy the apartment under the lease, even if some or all of the shares are inherited by him/her under the deceased person's will. (Note, however, that the Board of Directors is obligated to pay the owner the value of his or her shares if it is determined that he/she will not be occupying the apartment.)

THIS MEMORANDUM HAS BEEN PREPARED BY THE COMMUNITY DEVELOPMENT LEGAL ASSISTANCE CENTER, WHICH REPRESENTS YOUR COOPERATIVE CORPORATION. SINCE IMPORTANT RIGHTS ARE INVOLVED IN THE OWNERSHIP OF SHARES AND THE HOLDING OF A PROPRIETARY LEASE, IF YOUR FAMILY SITUATION IS DIFFERENT FROM THOSE DISCUSSED ABOVE, OR IF YOU HAVE SPECIFIC QUESTIONS, YOU MAY WANT TO CONSULT YOUR OWN LAWYER.

\*The Board of Directors recommends that you place no more than two names on the Share Certificate and the Proprietary Lease.