WINNING STRATEGIES FOR EXPANDING CO-OP AND CONDO RESIDENCY: FROM APARTMENT COMBINATIONS TO PRIVATIZATION OF COMMON SPACE

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You own a perfect little apartment in a building you really like. Then life, as it always does, changes and you suddenly need more space. Miraculously, fate permits for the availability of contiguous vacant space to add to yours. Maybe it's not like that at all but rather, at the outset of a possible deal, you are presented the opportunity to purchase two adjacent units. It's really the same million dollar question though—should you do it? The answer may be found by analyzing two more questions: 1) Can you do it? and 2) Is it worth it?

The first one—can you do it?—is about drilling down through the procedural, legal, and engineering hurdles that exist. The procedural guardians at the gate are the cooperative and condominium boards and the New York City Department of Buildings (DOB). Successful results for dealing with their approval processes dramatically increase through the hiring of a licensed architect to draw up and present your renovation plans. Simply put, Co-op Boards have the most control over your living arrangements and the rules and regulations governing what you can and cannot do. While it is less so in a condo, they can still demand some onerous restrictions that you must adhere to. The good news when it comes to the legal hurdles and the DOB is that the obstacles for necessary permit approvals to combine horizontally or vertically (two floors maximum with an interior stair) contiguous apartments have been softened since 1997 (for more see the DOB Technical Policy and Procedure Notice # 3/97, TPPN #3/97). Prior to then, the red tape required to get through the process involved an amendment to the Certificate of Occupancy for the entire building (or what is known as an Alteration Type I for the technically inclined).

Since 1997, however, a less restrictive application known as an Alteration Type II may be filed for a construction work permit to, among other things, remove one of the kitchens from the combined units, maintain all existing means of egress and comply with all natural light and air requirements. This is all self-certified by your professional engineer or registered architect. Upon such a self-certified "sign off" regarding completed work, the DOB issues a letter of completion. If your existing unit is currently financed, however, you must also investigate the lender's requirements for permission to combine. This will likely involve a new appraisal and may require a refinance application (as opposed to a more streamlined loan modification). It is therefore imperative that you inquire with your lender before embarking on this process. Finally, the engineering hurdles follow the time-worn adage to measure twice, but cut once. The plans for your construction must, above all, not compromise the structural integrity of the building. This also includes your architect assuring that you are not tearing into essential building gas, electric, or plumbing lines in your grand vision for compound unit conquest.

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This leads to the next essential consideration—is it worth it? Or, put another way, will one plus one really equal two and a half? This point of view is strictly economic, so investigate at the outset what the comparative cost of reconfiguration will be as against an already established larger apartment. Since no two apartments are absolutely the same, the analysis may not be a science but it is a worthwhile exercise to also compare the added carrying charges for the combined unit to those of a ready-made, like-sized unit. Sometimes this analysis does not even involve a second unit, but instead the annexation of common area space. Don't be afraid to raise this possibility to your board. Most buildings will consider selling hallway space, for example, as long as it doesn't prevent other owners or building staff from accessing units or shared areas like stairwells and garbage facilities. It can actually be a win-win scenario as it generates revenue for the building (albeit, a nominal incentive, since the actual square footage annexed is typically small; it is one positive, nonetheless).

Condos can be more complicated than co-ops when it comes to this process because the co-op owns all common spaces (as it owns the building) so the Board inherently has the authority to sell a piece of hallway outright to a shareholder. In a condo, however, all unit owners possess an undivided interest in the common spaces. Consequently, a sale would require the consent of all owners which may be extremely difficult to achieve. What usually occurs instead is a licensing arrangement. Typical license terms would require the unit owner to indemnify the condo from any damages that arise from use of the space and the building will likely require unrestricted access for any necessary future building work.

In sum, combining units or privatizing space can be a savvy move but, like anything else, look carefully before you leap.