

# Buyer, Beware... Of a Condo Board's Right of First Refusal

By Tom Acitelli • 09/07/07 3:08pm

Last year, Judith Gimbel Mendelsund, a retired school teacher, signed a contract to purchase a two-bedroom condo at 14 East 96<sup>th</sup> Street for \$1.8 million cash, the highest price ever paid in that building. A week before the agreed-upon closing date, a certified letter from Peter Cohen, the chairman of the condo's board arrived at Ms. Gimbel Mendelsund's lawyer's office, informing her that the board had chosen to exercise its right of first refusal—and would be purchasing the apartment she thought she was to buy the next week.

For Ms. Gimbel Mendelsund, losing the condo apartment was particularly disastrous since she said all the arrangements had been made to sell her co-op in Gramercy Park the day before her scheduled closing for the condo and could not be changed. As a result, she was forced to put her furniture in storage; move in with her mother; pay substantial legal fees; and begin to search all over again for an apartment.

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Buyers have been persuaded that there are many advantages to purchasing a condo over a co-op—brokers cite the ability to sublet, lack of onerous board approval and the possibility of a larger mortgage—but many people might be unfamiliar with a condo's right of first refusal. Although rarely exercised, it's written into the bylaws of almost every condominium and gives boards a limited amount of time—usually 20 to 30 days from when a contract of sale is signed—to match the agreed-upon sales price and come up with their own funds to purchase the apartment in question.

Reasons a board might want to exercise this right are that the prospective purchaser could have a violent criminal record; an apartment is to be sold below market price and this might damage the property values of the other unit holders; or the condo needs space for a super's apartment or community room.

But none of these situations applied in Ms. Gimbel Mendelsund's case, and, in fact, the public record reveals the 14 East 96<sup>th</sup> Street condo board did not even use its funds to purchase the apartment. Instead, it was sold 10 days after the refusal to Maria Schneider, Mr. Cohen's mother-in-law. (He has refused to comment for this story.)

What can a spurned buyer do when a co-op board exercises its right of first refusal?

“Usually nothing,” said William M. Dellicato, a Manhattan attorney who specializes in condominium law. “The buyer is in a lousy position because taking a board to court is a lengthy and costly business, and it's hard to prove that a condo board has, in fact, practiced out-and-out discrimination.”

Recently, however, when the condo board of the Bennet Condominium in Washington Heights exercised its right of first refusal and tried to block the purchase of two adjoining apartments by YAI, a not-for-profit organization which provides services to mentally retarded and developmentally challenged people,

the organization sued the board, asserting violations of the Federal Fair Housing Act and New York's Human Rights Law. On March 30, the case was settled in favor of YAI, which has now been able to purchase the two apartments to create a supervised group residence for five individuals. Ms. Gimbel-Mendelsund has not said whether she, too, will pursue legal actions.

*Jane Garmey is a writer living in Manhattan.*