

QUESTIONS & ANSWERS

As Seen in *The* **COOPERATOR**
The Co-op & Condo Monthly

Home Equity Loan Requests

QI am on the board of a cooperative building in New York City. We have recently received two requests from shareholders looking to borrow additional funds by taking out a second loan, (in each case an equity line of credit arrangement) to be secured by a second lien on the apartment and its shares. In each instance we have been asked to provide a recognition agreement in the standard Aztech form to the holder of the second lien.

While we have requirements concerning how much debt can be placed on a unit, we have not attempted to restrict a shareholder from pledging his or her interest in their shares or apartment. We are concerned about providing rights under a recognition agreement to two separate lenders, who—might in the event of a default by the borrower—be competing for rights to the individual shares or shareholder's apartment.

—Wary Board Member

A“The customs for handling equity loans on cooperative apartments that have developed are far from elegant but there have been few reported problems,” says Thomas D. Kearns, an attorney with Olshan Grundman Frome Rosenzweig & Wolosky LLP, in Manhattan.



Thomas D. Kearns

“First, make sure you obtain the consent of the lender holding the main lien. The Aztech form recognition agreement the cooperative most likely signed for the original mortgage requires that. In addition, make sure your managing agent keeps excellent records. I also encourage key board members to keep duplicate copies of all recognition agreements. Court decisions have held cooperatives liable for not realizing the existence of a lien holder because of a lost recognition agreement. Insist that no officer sign any recognition agreement without a formal submission process to the managing agent.

“While the two lenders could conflict over steps to take after a default, the cooperative should not be injured. For example, under the Aztech, the cooperative is required to send a notice to the lien holder if the shareholder owes three months of maintenance charges. With two lenders, you must send two notices. Lenders frequently cure the default in those circumstances. The cooperative might receive checks from both lenders creating an administrative headache to straighten out. While it is possible the cooperative could become embroiled in a dispute between lenders, the Aztech protects the cooperative and as long as consent was obtained from the original lender, the cooperative will likely be paid any past due maintenance charges and,

in most cases, its legal fees.”