

UHAB's Guide to Wills, Estates, and Surrogate's Court for HDFC Co-op Boards

This guide was created as a tool to help empower the Board of Directors, Shareholders, and advisers of Housing Development Fund Corporation ("HDFC") co-ops so that these co-ops might be better prepared and better able to seek advice from an attorney regarding basic will and estate issues. Please note that this guide provides only general information concerning HDFC co-ops in the City of New York and it should not be construed as legal advice. While this information, including the definitions, may help provide a general overview for HDFC Boards, trainers, Shareholders and their families, it may not be applicable to any specific situation.

For more information, or to attend a UHAB "HDFC Wills & Estates Issues" seminar, please contact UHAB Member Services at (212) 479-3300 or visit www.uhab.coop. Persons seeking legal advice or an opinion regarding any specific set of facts or circumstances should contact a legal clinic or an HDFC attorney.

Where can I find more information?

If you are looking for general information about will and estate planning, UHAB will hold seminars from time to time. Call UHAB at (212) 479-3300 or visit www.uhab.coop for information.

Qualified low-income New Yorkers may be eligible for legal services including advance legal planning for Last Will and Testament and health care advance directives provided by New York Legal Assistance Group (NYLAG). Contact NYLAG's Advance Planning via their website at <https://nylag.org/advance-planning>, by phone at 212.613.6514, or by email at lifeplanning@nylag.org.

If a Shareholder has died in your HDFC and the estate remains unsettled, please consult your HDFC attorney. If you do not have an attorney able to answer HDFC estate questions, UHAB can also help connect you with private attorneys who have prior experience with estates and HDFC co-ops.

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CERTAIN DEFINITIONS:

HDFC An HDFC co-op, or housing development fund corporation, is a corporation formed under the New York Private Housing Finance Law. The purpose of an HDFC is to own one or more buildings and provide affordable housing to low-income house-holds. Most HDFCs are heavily regulated. HDFCs are owned by their Shareholders who elect a Board of Directors (“the Board”). Each Shareholder must follow the HDFC’s Proprietary Lease. Each member of the HDFC Board has a legal duty to monitor and manage the HDFC following the law and good business practices.

HDFC Shareholders own Shares of stock, and although the Shares relate to an apartment, HDFC Shares are generally considered personal property, not real estate.

Decedent The decedent is the person who has died.

Estate Everyone has an estate. An estate includes both the “assets” and “liabilities” owned by a decedent prior to the distribution of their property and the settling of their debts. Assets may include cash, bank accounts, real estate, legal rights, personal belongings, etc., and for HDFC Shareholders, assets may include their Shares of HDFC stock. Liabilities can include debts left by the decedent, the debts of the estate (including maintenance charges accrued after the death of the Shareholder), and other claims. The estate must be settled in accordance with the law and the terms of a will or, if there was no valid will, the laws of inheritance.

Will A will is a legal document used by courts to distribute the property of a decedent. Any person can write a will and then change or revoke that will during their lifetime. In order to be considered valid, a will must meet certain legal requirements. A will can have tax and other consequences. An attorney should be consulted when you write your will. There are organizations in New York that provide free or low cost legal advice.

Testator A testator is the person who completes and signs their will.

Probate The process by which a will is approved by a court as the valid and last will.

Joint Tenancy Many types of property, including Shares of stock, may be owned by two or more persons as “joint tenants with right of survivorship.” In the case of two joint owners of co-op Shares, if one of the joint owners should die, the remaining owner (the “survivor”) will own the Shares in full.

Tenancy-in-Common Property may be owned by two or more persons as tenants-in-common. In the case of two tenants-in-common who each own 50% of a co-op apartment’s Shares, if one co-owner should die, the decedent’s Shares must be distributed to their distributees according to their will or, if there is no valid will, to their heirs. This becomes complicated because the surviving co-owner continues to own 50% of the property and the other 50% can end up being owned by another person or several other people.

Tenancy by the Entirety Married couples can own Shares in a tenancy by the entirety which is similar to a joint tenancy in that the surviving spouse will end up owning the Shares in full. Tenancies by the entirety also provide limited protection against one spouse placing a lien on the other spouse’s interest in the Shares.

Will Alternatives Certain assets do not require administration through the Surrogate’s Court (these may include certain life insurance policies, payable-upon- death bank accounts, revocable living trusts, and assets held under a “joint tenancy with right of survivorship”). These assets can be transferred automatically and without a will upon a person’s death if the decedent properly designated beneficiaries. However, even if you have assets that transfer automatically, you may still need a will to deal with remaining assets and liabilities.

Intestate A person who dies “intestate” is a person who dies without a valid will. If Surrogate’s Court administration is required, the estate’s assets will be distributed to heirs listed in the New York State intestate succession laws (called “distributees”).

Heirs Heirs are the relatives who are likely to inherit from the estate if they out- live the decedent. If the decedent died without a will (“intestate”), those who will receive the estate assets are called distributees. If the decedent left a valid will (“testator”), those who will receive the estate assets are usually called “legatees” and are specifically chosen by the testator and written into the will. New York has complicated inheritance laws that can- not be easily summarized. In general, there is a special preference for a surviving spouse of the decedent and then for children of the decedent. If there is no surviving spouse and no children, the courts will first look to see if there are any surviving siblings, then grandparents, and, finally, more distant relatives. Because of complicating factors in the law and individual situations, it is best to ask an attorney about heirs.

Legatee A legatee is a person mentioned in a will as someone who should receive specific assets.

Power of Attorney A document used by a person to appoint another person as their agent to perform certain acts on their behalf. A power of attorney may be general or specific. A power of attorney is no longer valid once the person who issued the power of attorney has died. A power of attorney document does not allow the agent to make health care decisions; for that power the principal needs to execute a health care proxy document.

Administrator A person appointed by Surrogate’s Court to manage the estate of a decedent who died without a will. Administrators have to follow the law and the court’s directions and provide an accounting to the court of how they handled all of the decedent’s assets and liabilities.

Executor One who is named in a will to manage the estate is called an executor. Executors still must follow the instructions of the will as interpreted by Surrogate’s Court.

WHY ARE WILL AND ESTATE ISSUES IMPORTANT TO HDFC BOARDS?

A well-managed co-op should have procedures in place to facilitate an orderly transfer of ownership. It is in the HDFC’s interest to be sure that maintenance fees continue to be paid. And if the Board values its authority to approve all transfers of Shares, it is important that the Board be aware of the estate administration process so that the Board retains control over who is occupying an apartment after the death of a Shareholder.

SHOULD EACH SHAREHOLDER HAVE A WILL?

Yes. While the Board is interested in each Shareholder having a will to promote the smooth transfer of Shares and the continuance of maintenance fee payments, there are several important reasons why everyone should have a legal will. Some people shy away from the solemn responsibility of preparing a will, but avoiding it can leave the assets they've worked for all their lives dangerously unprotected.

Wills are the most common way for people to state their preferences about how their estates should be handled after their death. Many people use their wills to express their deepest sentiments toward their loved ones. A well-written will eases the transition for survivors by transferring property quickly and avoiding many tax burdens. Despite these advantages, many people do not have valid wills. While it is difficult to contemplate mortality, many people, no matter what their age or health, find that great peace of mind results from putting their affairs in order.

Wills vary from extremely simple single-page documents to elaborate volumes, depending on the estate size and preferences of the person making the will. Wills describe the estate and the people (the "legatees") that the testator has named. Wills can also provide special instructions about care of minor children, gifts to charity, and formation of posthumous trusts. Many people choose to disinherit people who might usually be expected to receive property. Wills can also be changed or revoked during the testator's lifetime.

Without a will, the law will decide what happens to the Shares and other property. And, without a will, the court process can be longer, more contested, and more expensive.

For married people it is important to have a will because the "spouse gets half" assumption does not always apply. For older people it is important to take time to review the will you already have in place. And there are also certain times when testators will want to create a new will or review an existing one. Marriage, separation, divorce, birth or adoption of a child are all times when it is prudent to ensure your will is updated to your specifications.

WHAT ARE THE BASIC REQUIREMENTS OF A WILL?

A will must be written. The testator who signs the will must have been at least 18 years old and of "sound mind" (know what they are doing, be mentally healthy, sane). The rules governing a will's validity vary by state.

Typically, the testator must sign at the end of the document and initial all pages. The testator must sign in front of at least two adult witnesses (using three adult witnesses is a good idea in case any witness cannot be found later). While witnesses do not have to read the will, the witnesses do have to watch the testator sign the will and hear the testator clearly state out loud that what he or she is signing is his or her will. Witnesses should then immediately sign. To learn about other will requirements, consult an attorney.

WHAT IS SURROGATE'S COURT?

The Surrogate's Court is a type of court in New York with jurisdiction over probates, estates and adoptions. Each borough has its own Surrogate's Court, which hears and decides cases involving the affairs of decedents, including deciding if a will is genuine (the "probate of a will") and the administration of estates. The Surrogate's Court has different procedures depending on the value of the estate and whether the estate includes real property or personal property. HDFC Shares are personal property and their value can usually be determined by the Board in accordance with resale policies in the HDFC's governing documents. Any person (often relatives) may ask to become the administrator of the estate by petitioning the court for "Letters Testamentary" if there is a will or "Letters of Administration" if there is no will. If a person is appointed to serve as the administrator, that does not mean they will necessarily be given any of the decedent's property. An administrator is responsible for distributing the decedent's property and settling the decedent's debts (however, importantly, the administrator does not become personally liable for the decedent's debts). An administrator must respond carefully to the concerns of family members, creditors, attorneys, and the court. Administering an estate requires regular communication and careful record keeping. For more information, contact an attorney and see: www.courts.state.ny.us/courts/nyc/surrogates/index.shtml

HOW DO YOU CONTACT THE SURROGATE'S COURT?

Manhattan: 31 Chambers Street, New York, NY 10007 - (646) 386-5000

The Bronx: 851 Grand Concourse, Bronx, NY 10451 - (718) 618-2300

Queens: 88-11 Sutphin Boulevard, Jamaica, NY 11435 - (718) 298-0500

Brooklyn: 2 Johnson Street, Brooklyn, NY 11201 - (347) 404-9700

Staten Island: 18 Richmond Terr., Staten Island, NY 10301 - (718) 675-8500

WHAT INFORMATION WILL SURROGATE'S COURT WANT?

The Surrogate's Court will want a certified copy of the death certificate, the names and addresses of "distributees," copies of paid funeral bills, a list of the decedent's known assets and the assets' estimated value.

Before making any decisions related to the distribution of the estate, the Surrogate's Court will also need to verify that the petitioner made diligent efforts to notify certain family members and allow them to participate in court proceedings (called "due diligence"). Surrogate's Court will also require certain fees and, if the value of the estate is high enough, a bond.

The friends or family members of the decedent should attempt to list what the decedent owned including bank accounts, insurance, and property that is outside of the State of New York. The Surrogate's Court may also require filing fees, an affidavit from the person petitioning to become administrator, copies of all divorce decrees, certified copies of all adoptions, and the original will. A family member who is willing to be responsible for filing court papers, managing

records, and paying debts, may consider petitioning to the Surrogate’s Court to become administrator of the estate.

WHAT ADVICE CAN A BOARD PROVIDE TO SHAREHOLDERS?

In order to make the Surrogate’s Court process go smoothly, the Board can encourage Shareholders to make their wills and to keep the original will in a safe place that family members can find after the testator has passed away. Shareholders can be asked to keep the Board informed with updated contact information for family members, any named executor, and the location of the will.

WHAT CAN BE IN THE PROPRIETARY LEASE REGARDING ESTATE ISSUES?

The Proprietary Lease should be clear that there is no transfer of the Proprietary Lease or occupancy rights without the Board’s written permission. The Board should review any occupancy rights. If the Proprietary Lease contains generous or unclear occupancy rights for family or guests, this can encourage multiple claims of a right to occupy an apartment after the death of the Shareholder. The Proprietary Lease may also provide the Board with a “right of first refusal” or even an “option to purchase” the Shares at a specified sales price.

WHAT ADVICE CAN A BOARD PROVIDE TO THE FAMILY WHEN A SHAREHOLDER DIES?

The family of the decedent should contact a New York attorney familiar with estates and HDFC co-ops. Family members should also find the original will, if one was left. If no will can be located, family members should gather information about the assets and liabilities of the decedent, including documentation of the decedent’s bank accounts, insurance, and property located outside of the State of New York. This information will be used in the proceedings at Surrogate’s Court. A family member or, in certain limited cases, a non-relative who is willing to be responsible for filing court papers, managing records, and paying debts, may consider petitioning to the Surrogate’s Court to become administrator of the estate. Family members may also want to provide the Board with a list of the decedent’s family along with addresses and phone numbers.

WHAT SHOULD A BOARD DO IF A SHAREHOLDER DIES?

The recommended action for the Board is different in each case. In all cases, however, the Board has a “fiduciary duty” to act in the best interest of the HDFC as a corporation.

In no circumstances should the Board assume that the HDFC becomes owner of the Shares simply because the Shareholder has died. The Board should consult an attorney or assume that

the estate of the deceased owns the Shares until a court determines otherwise. If the Shares and Proprietary Lease name a second person as a joint tenant with right of survivorship, then the right to occupy the apartment should transfer without involving the estate or Surrogate's Court. Otherwise, the Board may want to notify the deceased Shareholder's family members and assist them with getting an administrator appointed to settle the estate. If no family or friends are available to act as administrator of the estate, the Board should explore ways to get the Public Administrator involved.

The estate continues to be responsible for the decedent's maintenance fee, so the Board must notify the administrator of the estate of any and all charges and debts that may be owed.

The Board and any managing agent should be careful to accept payment of only from the administrator. This can prevent a third party (a family member or an occupant of the apartment) from claiming that, by accepting payments, the Board has approved a transfer of the Proprietary Lease. If the HDFC needs to cash third-party maintenance fee payments, the Board should promptly send a letter to the sender of the checks that denies occupancy rights and reserves the HDFC's rights to approve all transfers. At the same time, the Board can send a letter to the estate stating that the check is being accepted solely as a convenience on behalf of the estate.

If the Shareholder lived alone and no person was named on the Shares and Proprietary Lease as a Joint Tenant with Right of Survivorship, the HDFC may want to lock the apartment to prevent access by illegal occupants and to protect the decedent's personal possessions (but see also below, under rights and responsibilities of the estate). If friends, family or others are entering the decedent's apartment without clear legal right, the HDFC should consult an attorney. While the Proprietary Lease may state that the Shareholder's right to occupy the apartment has terminated upon their death, the HDFC must not violate tenant/landlord law with regard to the personal possessions left behind. If traffic or use of the apartment threatens the HDFC building or the other Shareholders, the Board may have a responsibility to secure a vacated apartment. However, the Board should consult an attorney before proceeding.

The HDFC must also respect the property rights of the estate with regard to the Shares. However, if maintenance fees are not paid, and if an administrator has been appointed by the Surrogate's Court, the estate can be taken to housing court for non-payment. Also, prior to allowing any sale of Shares, the Board can demand payment of any lien placed on the Shares to cover debts owed to the HDFC. The Board's attorney should review the proprietary lease and advise whether the Board can also recover its attorneys' fees.

Once the Surrogate's Court determines who has inherited the Shares, the new Shareholder may wish to move in and become a Resident- Shareholder, or they may wish to sell their Shares to the HDFC, a person on the HDFC's waiting list, or to another person. Whether the Board decides to approve a person who has inherited Shares to move in or to approve a sale of Shares, the Board should review its Bylaws and other corporate documents and consult an attorney.

WHAT ARE THE RIGHTS AND RESPONSIBILITIES OF THE ESTATE?

Immediately following death and even before an administrator or executor is appointed to

administer the estate, members of the decedent’s family or, if no family survives the decedent, close friends have certain duties.

The family or friends of the decedent are responsible for making funeral and burial arrangements, providing accurate information for the death certificate and ordering a sufficient number of copies of the death certificate. The family or friends of the decedent are to determine the existence and location of the decedent’s will and provide for safeguarding the decedent’s important documents (including documents that may contain the decedent’s social security number and other sensitive information such as bank account numbers—identify theft is a big concern even after someone dies). The family or friends of the decedent should act to secure the decedent’s apartment to prevent any loss of personal property.

Some of the rights of the estate may depend on restrictions found in the HDFC’s governing documents (i.e. the Proprietary Lease and By-laws). The Proprietary Lease and Shares generally become the personal property of the decedent’s estate. This estate becomes a party to the Proprietary Lease and is responsible for all leaseholder obligations including maintenance fees. Family members who were allowed by the Proprietary Lease to occupy the apartment before the death of the Shareholder can usually continue to occupy after the death of the Shareholder until the estate is fully administered. However, the estate is also bound by restrictions in the Proprietary Lease and other governing documents, such as a prohibition against transfer of the Proprietary Lease without the Board’s permission.

The Board or managing agent should communicate with the administrator or executor of the estate and be persistent about the payment of maintenance fees. If the estate’s response is not prompt, the matter should be referred to an attorney to recommend action to the Board. If the estate’s debts to the HDFC are substantial, action could include commencing a summary dispossess proceeding against the administrator or executor to recover possession based on nonpayment.

If no administrator or executor has been named after a reasonable length of time, the Board can commence such a proceeding by naming as defendants the decedent’s surviving spouse and children or the legatees named in the will.

DOES THE PERSON WHO INHERITS SHARES GET TO MOVE INTO THE APARTMENT?

In order to become a Resident-Shareholder in an HDFC, a person who inherits Shares must first demonstrate that they meet the HDFC’s legal requirements for issuing a Proprietary Lease and they must be approved by the Board. An heir or distributee who inherits Shares may not qualify to live in the apartment and, if qualified, they may or not be approved by the Board. A person who inherits Shares who cannot become a Resident- Shareholder will still be able to sell the Shares to the HDFC or to a person qualified to become a Resident-Shareholder.

There are many reasons why a person who inherits Shares may not be able to live in the HDFC apartment. To live in an HDFC, a person must meet certain income requirements and apply to be approved by the Board.

Someone who inherits the Shares may not be qualified to become a resident because they are under age, over income, not willing to become a primary resident (live most of the year in the HDFC building), or other legal restrictions. In addition to these legal questions, the Board may reject applicants for a number of reasons. A Board may reject an applicant because of concerns about the applicant's credit report, lack of sufficient income, criminal record, uncooperative behavior, and other reasons. Many HDFC's have policies that the Board will not "unreasonably deny" an application from the spouse, partner or certain other close family members of a deceased Shareholder, but this does not mean approval is automatic. The HDFC may also have a policy to only approve people who are on the HDFC's waiting list.

If the person who inherits the Shares is legally qualified and also approved, the Board should issue a Proprietary Lease so that the applicant becomes a Resident-Shareholder. However, if one or more people in addition to the decedent were legally named on the Share Certificate, then each person named may be an equal owner of the Shares. In such a case, the Board should consult an attorney before issuing a proprietary lease to any person, even to the person that is named in the decedent's will.

To find more details, the Board and Shareholders should review the HDFC's By-laws, Proprietary Lease, Certificate of Incorporation, Deed, any Regulatory Agreement or Monitoring Agreement, and any other governing documents. Consult these corporate documents, the Share Certificate, and a knowledgeable HDFC attorney before proceeding.

UHAB Guide to Wills, Estates and

Surrogate's Court for the HDFC Co-op Board

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