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Caught in a TRAP

BY TRIPP WHETSELL

When Tom McCluskey's younger sister Patty died of pancreatic cancer on New Year's Eve 2010 and his father was admitted to a Manhattan nursing home just after, it was the most traumatic ordeal he'd ever faced.

It was about to get worse. After taking a four-month leave from his job as a Los Angeles film instructor to get his dad settled and put his sister's two-bedroom apartment up for sale, McCluskey found himself in New York co-op board hell.

Listed at \$223,000, a price that met the co-ops sales minimum, the three-bedroom at Windsor Oaks in Bayside, Queens, went months without a single offer. When he tried to lower the price, his broker told him the board wouldn't approve it. They didn't for months. One year and 20 prospective buyers later, the apartment remains empty at \$213,000.

"After losing my sister and having to put my father in a nursing home, this is the last thing in the world I needed to deal with," says the Astoria native. "The added emotional strain has been horrendous, especially since I'm dealing with it from 3,000 miles away."

McCluskey's predicament is especially troubling for several reasons, not the least of which is how it happened or that he's struggling to carry both his sister's mortgage and the one on the California home he shares with his wife and newborn daughter to the tune of an extra \$2,000 per month.

What might be worse, similar incidents of co-op board arbitrary floor-pricing are on the rise throughout the city, effectively holding desperate shareholders hostage.

Coop boards, essentially, are demanding apartment prices not go below certain figures to hold the value of the other homes in the building. They often base the price flooring on the top month of sales ever experienced at the property.

There's no way to say for sure how

Bayside co-op board forces a price floor, a policy that leaves many N.Y.ers stuck



Frank McCutchen still trying to sell his home

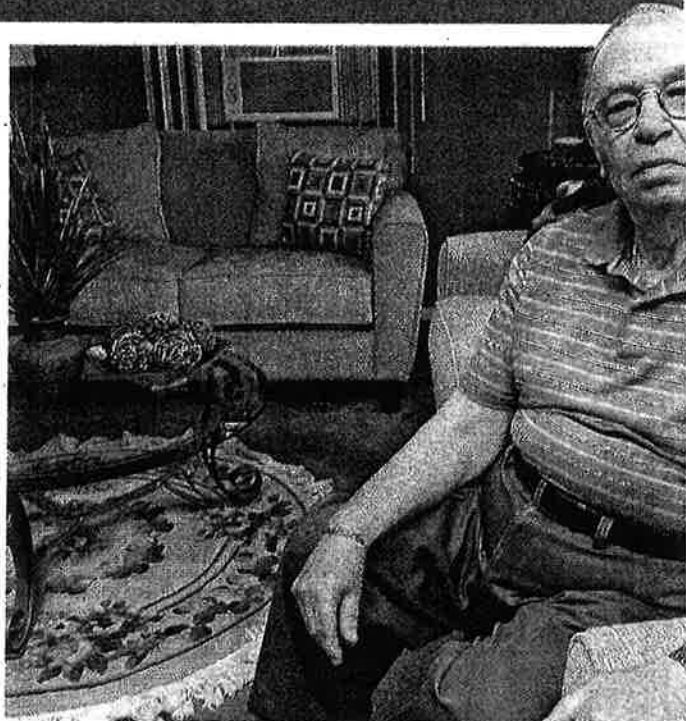
many of the city's over half-million co-op owners are in such straits, as no one tracks these figures. While the practice is technically legal and has been around for decades, its ethical dimension is open to debate.

What real estate attorneys and co-op experts do say overwhelmingly, however, is that the issue has become more prevalent and harmful since the recession.

"On an anecdotal basis, I've definitely seen this happen with a lot more frequency since 2008," says Jerry Feeney, a Manhattan real estate lawyer who is unfamiliar with McCluskey's plight.

Council of New York Cooperatives

Tom McCluskey (l.) is trying to sell his deceased sister's coop at Windsor Oaks (r.)



Windsor Oaks in Bayside, Queens

and Condominiums executive director Mary Ann Rothman adds: "It's counter-productive to both the co-op and the seller. Especially now, boards need to be more flexible with shareholders who need to be able to sell in order to move on. No one wants to sell at a price lower than they absolutely have to, plus the fact that a co-op that repeatedly rejects buyers will find that both the values will go down and that brokers will be more reluctant to bring in purchasers."

To varying degrees, this recent surge has affected practically all New York co-op dwellers, like Beata Santora, a 32-year-old website editor living in Park

Slope who says the experience of trying to unload her upper East Side studio for nearly year "made me so disgusted that never by another co-op again." However it has been most acutely felt in the outer boroughs at places like Windsor Oaks, 898-unit middle income co-op originally built as a rental in the 1950s.

Multiple brokers who asked not to be identified say that of the nearly 90 apartments up for grabs, more than half have been on the market for over two years because of this policy.

While the majority of residents describe their experiences living at Windsor Oaks as "positive," like McCluskey the say selling there has been a nightmare.

Many have complained to local politicians Gary Ackerman and Mark Weprins, while others they are considering a lawsuit which Queens real estate attorney Errol Brett is "absolutely convinced they could win."

"A board of directors owes a fiduciary duty to all its shareholders, not just the ones who aren't selling at the present time at the expense of those who are," Brett says. "This policy at Windsor Oaks is the most screwed up thinking I've ever seen at any co-op, and I'd enthusiastically be willing to represent the shareholders they decide to go forward."





Above, Ronald Spanier in his home at Windsor Oaks. Above right, his kitchen

Retired schoolteacher Ronald Spanier, 76, who moved to Windsor Oaks following his divorce 10 years ago and now wants be closer to his family on Long Island, may be one of them. For the past two years, he's been trying to sell the two-bedroom apartment he bought for \$104,000 in 2001, to no avail.

"Since that time, the board has come down about 10% on what they originally told me I had to sell it for, but even with that I haven't gotten a single offer out of the 25 people who have seen my apartment," Spanier says. "What angers me the most is that they've completely taken away any power I might have to negotiate."

Other irate former residents like retired fireman Frank McCutchen, 54, who

now lives in Smithtown, and Christopher Reali, a Ph.D. student at the University of North Carolina Chapel Hill, echo these sentiments.

"I lived here for more than 20 years and I loved it, but now I'm ready to move on and I can't," says McCutchen, whose brother lives in the apartment part-time and is picking up part of \$750 monthly maintenance tab. "And I'm one of the lucky ones, even though I'm still struggling."

Right now, my wife and I are maintaining, because we have renters, and so we've indefinitely put our plans to sell on hold," Reali says. "However, if they move and we can't find a buyer, then we might have to just walk away."

Commenting on its sales-price policies, Windsor Oaks board president Ronald Kaye told the Daily News: "We're very sympathetic to the plight of the people who can't sell, but the board has as much if not more of a responsibility to the ones who remain. The harsh reality is that what my neighbor sells for affects what I can sell for, and that's something every co-op owner has to take into account."

Kaye also says Windsor Oaks has "extremely lenient subleasing policies" in addition to offering credits for up to 10% of the purchase price for sellers who want to renovate.

But while such concessions may provide temporary relief for some, others like McCluskey say they just want to get out before it's too late.

"All I can do is grit my teeth and hope to come out on the other side," he says. "What other choice to I have?"

YOU SHOULD KNOW

Though minimum floor pricing is legal in New York State, there are things you can do to protect yourself as a shareholder, experts say. We spoke to real estate attorneys Jerry Feeny and Errol Brett to find out how:

- Have the broker support the price, says Feeny. When submitting your board package, the broker should include data to support that the price obtained does, in fact, reflect the market.
- Give the building the appraisal, says Feeny. If the bank has conducted the appraisal, give it to management to support the price. It can go a long way.
- Brett says check the facts and contact the managing agent or the board of directors to find out exactly what the resale policy is and what are the special requirements. Try to get the policy in writing. Remember, often false rumors can lead to misinformation.
- Talk to other shareholders, Feeny advises. If your board is adamant about pricing prices, rally other shareholders to let it be known that the practice does not benefit the coop as a whole. If your building has a flip tax, let the shareholders know that killed deals mean no flip tax for the building, and that can cause higher maintenance charges.
- Brett says check real estate brokers familiar with the property to see if they have had any deals denied because of the minimum sales price, ascertaining the names of the various parties involved.
- Check with your neighbors to see if they are willing to join with you in requesting a referendum vote as to voiding the minimum sales-price policy, urges Brett. Remember shareholders by way of petition signed by 25% of the shareholders can call for a special meeting.
- Write to the board, says Feeny. If your deal is rejected over price, don't give up. Try to call the board members, and if they won't speak to you, write them and put letters under their door. If you're in financial trouble, let them know that if the deal does not go through, you might not be able to keep paying maintenance, and a default might occur. This can sometimes convey how serious the issue is for you and get the board to reconsider its position.
- Finally, check with a good attorney.

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Mortgage Guide

Bankrate.com

Program	Rate	Points	Fees	% Down	APR
WELLS FARGO HOME MORTGAGE 347-563-7500					
30 yr fixed	Call for Rates				
15 yr fixed	Call for Rates				
30 yr FHA	Call for Rates				
30 yr FHA refi	Call for Rates				
Long Term Rate Locks-Free Bi Wkly Program-Loans in all 50 states (C)					

	30 yr fixed	15 yr fixed	5 yr ARM
This week	4.11	3.34	3.03
Last week	4.10	3.35	3.04
Last year	5.04	4.32	3.68

Source: Bankrate.com, for more information visit www.bankrate.com. Bankrate national averages are based on 100 largest institutions in the top 10 markets in the United States.

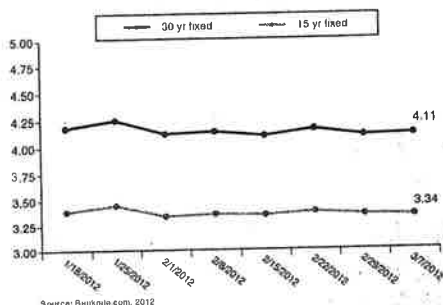


Here's what the monthly loan payment would be on a home mortgage loan using the following programs at prevailing interest rates

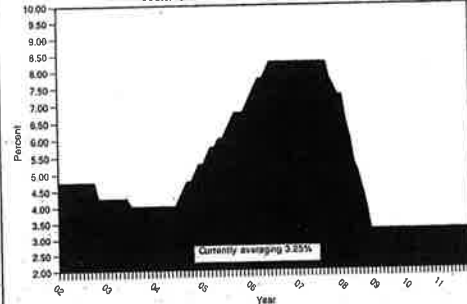
\$165,000 loan amount			
Loan Program	Rate	Monthly Payment	
1 yr ARM	3.08%	\$702.79	
5/1 ARM	3.03%	\$698.32	
15 yr fixed	3.34%	\$1,166.63	
30 yr fixed	4.11%	\$788.23	
\$435,000 loan amount			
30 yr jumbo	4.83%	\$2,237.81	

Source: Bankrate.com

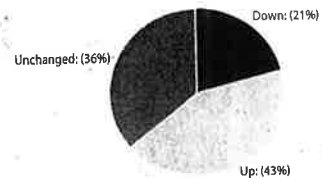
Fixed rate mortgage trend



Wall Street Journal Prime Rate



Each week Bankrate surveys mortgage experts to predict which way rates will go in coming weeks: up, down, or stay about the same. Here is what they say this week (03/08/12 - 03/14/12)



Source: Bankrate.com, 2012

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