When should you discuss the future of a family home with your parents? Now would be good.

By CONSTANCE ROSENBLUM

In this city of 350,000-plus co-op apartments and an aging population, it's a quintessential New York story. A couple has owned an apartment for decades. Long after the children departed the nest, the parents have stayed, rattling around in quarters too large for their needs. Yet even if the apartment has grown shabbier, its value has soared.

Except in the case of the superrich, the apartment is most likely the parents' major asset, and their children understandably want its future resolved while their parents are still in good shape mentally and physically. They want to avoid unnecessary estate taxes, capital gains taxes and other financial penalties should the parents die or move to smaller, easier-to-manage quarters.

They might want to raise cash to pay for possible medical expenses down the line or to reduce assets so a parent needing health aids or nursing-home care will be eligible for Medicaid. They might be eyeing the apartment for their own use.

How do children nudge often-reluctant parents toward making sound and fiscally smart decisions about the future of the family home? How can assets be protected while keeping a roof over the parents' head? What are the main issues that need to be kept in mind as planning goes forward? How do children, or in their absence, other close relatives, begin the difficult and sometimes painful conversations needed to resolve these issues?

In the case of apartments that have sharply escalated in value, how do you guide parents unused to dealing with large sums of money?

Frances Kater, a broker with Douglas Elliman Real Estate, well knows what can happen when families fail to act in a timely manner. Her experience involved a one-time grande dame of the world of fashion journalism who lived alone in a two-bedroom Park Avenue co-op she had owned...
CONTINUED FROM PAGE 1: for decades. At this point in her 80s, never married and childless, the woman was mostly bedridden. Her nephew, her main caregiver, invited Ms. Kasier to join a discussion of the apartment’s future.

“I witnessed two very long and emotional conversations,” Ms. Kasier said. “When the nephew told his aunt that she’d have to sell the apartment, she became terrified and insisted that it be taken off the market. She couldn’t picture moving into a one-bedroom rental, and she began to cry. The nephew wanted to respect her wishes, but the whole effort proved way too stressful.”

Every family’s situation is different. But lawyers and other estate planning professionals agree that taking a few basic steps early on can be extremely helpful and can avoid problems in the future. Some of the suggestions may seem self-evident, but as Aaron Shulewitz, a partner of Belkin Burudens Weintraub & Goldmann who represents co-ops and condominiums, said: “Many older people are reluctant to relinquish control of where they live, if this advice were so obvious, there wouldn’t be so many messy situations.”

Don’t Drag Your Feet
On one point the experts are unanimous: When it comes to determining the future of a home, start early. Don’t procrastinate. Catastrophic medical situations can arise out of the blue. People are struck by cars, or severely injured in falls. Even a seemingly healthy person can die unexpectedly. The process should begin while the owners can still think clearly, see and hear well, and are relatively mobile. Because a person of sound mind will find it easier and less stressful to make complete decisions and complete necessary documents, children are encouraged not to wait until they see glimmers of fuzzy thinking or memory loss.

Dementia can start years before symptoms manifest themselves, and as Anita Rosenblum, a partner at Stroock & Stroock & Lavan and in long-term specialists in estate planning, put it, “There’s never a clear line as to when a person starts to falter or decline.”

Begin the Conversation
Of all the intimate conversations that take place among people close to one another—“Should we get married?” “should we have a baby?”—few are as fraught as the one about how to dispose of a long-held family home. For parents who belong in the so-called silent generation, born in the 1920s, 30s and early 40s, and intensely private about their affairs, the reluctance to discuss financial matters can be fierce. “My dad’s 84, and he won’t say one word about estate planning,” said Steven Stadler, a partner at Wolf Haldenstein Adler Freeman & Herz who represents co-ops and condominiums. “My brother and I have repeatedly tried to raise these issues, but he resisted every step of the way.”

Even among younger parents, the need for tact is enormous, which is why some estate-planning experts suggest raising the issue in a nonthreatening setting, perhaps over drinks or a meal.

“You might say you’re doing your own financial planning as regards your home and then segue to asking your parents what they’d like to see happen to their home,” said Stephen Hartnett, the associate director of education of the American Academy of Estate Planning Attorneys.

“A child might mention an article he read about estate planning and offer to pass it along. Sometimes it’s helpful to bring in an outside expert, to help defuse the situation.”

“You can address the subject in small bits,” Mr. Hartnett said, “raising just one issue at a time. But there’s no denying that these conversations are hard. No one wants to be reminded that they won’t live forever.”

Balance Competing Issues
What’s more important, keeping a roof over a parent’s head or protecting the parent from a huge tax bill? Should the parent’s wishes take precedence over professional legal advice? Who should make the final decision, parents or children? Because decisions involving estate, tax protection, medical care and lifestyle are intertwined, the challenges are great.

Taxes, of course, are a major issue, and in any discussion of taxes, the key figure is currently $5.52 million, the maximum amount an individual can give to someone other than a spouse without paying federal estate tax. Should the first: is the parent in the apartment and also owns the apartment? Or is this the primary residence now? But what comes next? A nursing home? And what happens to the apartment when they gone?

“Some of my clients,” she said, “have lived up there for 30 years and they thought they had a secure future. Then, you can have to make a decision that feels comfortable.”

Mr. Hartnett agrees. “You have to ask: Will the apartment work for the parents as long as you know what your down payment is, but most of all, you have to make a decision that feels comfortable.”

Know the Co-op’s Policy
Many co-op owners believe that if they die or move, their children automatically have the right to live in their apartment. It’s a misconception that can cause endless problems for both parents and offspring—“one of the biggest mistakes co-op owners make,” Ms. Rosenblum said.

Some co-ops allow the transfer of an apartment to an adult member of the deceased owner’s immediate family as long as that person can demonstrate financial responsibility. In other buildings, that person will have to endure normal board scutiny, including an interview, and may have to submit detailed financial statements, tax returns and other documents, including character references. Because co-ops regulate the transfer of an apartment from building to building, estate specialists urge co-op owners to read up on the rules governing co-ops in general and those governing their building in particular. This is a critical step, because co-ops vary in the extent to which they are willing to accommodate their members. Some co-ops operate under a different financial structure.

A co-op is organized like a corporation, with residents owning shares in the building through proprietary leases, and a child can generally inherit the co-op and reap the proceeds of a sale (minus a 10% tax, if applicable). The shares can also be put in a trust for the parents — for example, in a personal trust account that the grandparents would use to pay for the apartment. Before selling the co-op, the祖父母 would need to consult a trust agreement.

Many boards will approve such a transfer, assuring almost all the time the trust will last and the person responsible for maintaining the apartment will remain the tenant. To protect the apartment from being used as anything other than a home, the transfer must be approved by the board of directors, and the trust must be comprised of at least 10% of the occupants.

But without board approval, the transfer of the apartment to the trust is not valid and the apartment will revert to the co-op. If the board decides to break the lease, the parents can sue to rescue the apartment, the process can take time. “You have to convince the board case by case, and it might take six to nine months to get the co-op on board,” said Judith Del Ray Grimaldi, a partner in a Brooklyn firm specializing in estate planning and elder law, and the chairmanwoman of the New York City Bar Association’s Committee on Legal Problems of the Aging.

Some boards do not allow the transfer of the apartment. When this happens, the apartment will revert to the co-op, but the co-op officers can override the board’s decision and make the transfer. Some co-op owners often chafe at these requirements. “They’ll bottleneck board members who’ve been gone,” Mr. Shulewitz said.

Mr. Shulewitz said, “They’ll say, ‘My daughter’s a wonderful girl. Why can’t she live in my apartment?’”

Bill Eva Taka, a partner in Stroock & Stroock & Lavan who represents co-ops and condominiums, pointed out: “It’s not a question of good guys and bad guys. Co-op owners like to think that their apartment is their private home, but that’s not the co-op relationship. You’re financially and socially wedded to your neighbors. The board needs to protect other stakeholders, financially and otherwise. People need to understand the implications.”

Beware of Fraud
A world in which people are living longer offers greater opportunity for what is called elder fraud, as the elderly fraud easily spills over into real estate dealings. Annette Palermo-Smith, a lawyer who specializes in real estate lending, has seen elder fraud up close. She recalls the case of a client, a once-famous and still striking ballerina in her mid-70s. “She looked like a famous ballerina in the 50s,” Ms. Palermo-Smith said. “She was slim and she wore only black.”

The woman had lived for decades in a white-glove condominium in the East 60’s, in a balcony apartment worth $899,000. “Her husband had died, there were no children, and she was alone but for a sliding on Lincoln Road.”

The trouble began when a woman in the building befriended her, tried to buy her apartment for well below what it was worth, and somehow became the co-executor of her will,” said Ms. Palermo-Smith, who is the chairwoman of the tax, trusts and estates department of Wells, Jordan & Liebman, a firm in Paramus, N.J. “But once the contract was drawn up, we discovered that this ‘friend’ had tried to do the same thing with other people in the building.”

“You try to do everything right, but how do you prevent people like this from changing the wrong path?” Ms. Palermo-Smith said, “My client was vulnerable because she was old, lonely and pretty much alone.”

Her advice: “Always get independent legal counsel.” Beware of outside influences and of all, beware of newfound friends.”

The New York Legal Assistance Group, an organization that offers estate-planning help to older people and others of modest means, remembers the drama that swirled around several weeks ago when a woman died a few days before, for $8,000 and now worth $899,000. “The moral of the story is to be alert,” Mr. Stadler said. “Beware of the scene.”