

REAL ESTATE

Real Estate Q & A

By JAY ROMANO AUG. 13, 2010

A Cell Tower on the Roof

Q *My co-op wants to place a cell tower on the common roof space next to my personal roof deck. Given that we will be feet away from antennas emitting radiation, I am very concerned for the health of my small children. How can I stop this?*

A “A co-op board of directors has broad management powers,” said Stephen Lasser, a Manhattan co-op and condominium lawyer. “And as long as a board’s actions are not in violation of its co-op’s governing documents and applicable laws, a court will not second-guess a board’s business decision.” According to Mr. Lasser, many proprietary leases specify that boards have the right to install roof antennas even if they will be adjacent to private roof space. There are no laws, he added, that would prohibit the board’s proposal based on health concerns. Therefore, he said, “there does not appear to be a legal basis to challenge the construction.”

When the ‘Ex’ Leaves a Stabilized Rental

Q *I live in a rent-stabilized apartment in Manhattan, but the lease, which is now up for renewal, is in my former girlfriend’s name. She moved out, and I have*

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cannot. Can I stay in the apartment and get the lease in my name?

A “An occupant of an apartment who is not the leaseholder is not entitled to a renewal lease under the rent-stabilization laws unless he can prove he is entitled to succession rights or that after the departure of the original tenant the landlord created a separate landlord-tenant relationship with the boyfriend,” said David Ng, a Manhattan lawyer who represents tenants. In this case, he said, it does not appear that the landlord created such a relationship as the checks sent in by the writer would appear to be a payment on behalf of the girlfriend. If, however, the landlord knew that the girlfriend had left, and continued to accept the writer’s checks, a court could rule that the landlord had waived his right to deny the creation of a new landlord-tenant relationship. Mr. Ng noted that a succession-rights claim would require the writer to show that he and his girlfriend had had a “family” relationship, and that both had used the apartment as their primary residence for two years before her departure.

Charging Visitors for Condo Parking

Q *Can a condo association charge visitors for parking without consulting the unit owners?*

A “The board is generally not required to consult the unit owners in making decisions about how to manage the common property of the condominium,” said Howard Schechter, a Manhattan co-op and condo lawyer. “But the general answer may not apply in this case.” Mr. Schechter says that condo boards have only the authority given to them in the condominium declaration and by-laws, and that this authority is often subject to certain conditions. One such condition may govern the intended use of the common areas. For visitor parking, the intended use may be apparent from the governing documents, Mr. Schechter said. So the filed declaration, by-laws and plans should be reviewed, to determine whether they restrict the authority of the board, or make specific provision for free visitor parking.

Submit questions by e-mail to realestateqa@nytimes.com. Answers can only be given

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