

## REAL ESTATE

**Q & A**

By JAY ROMANO APRIL 19, 2012

**When Stabilized Units Are Combined**

**Q** *If two adjacent rent-stabilized units are combined, how is the rent of the new, combined unit determined? For example, Unit A is rented for \$750 a month, Unit B for \$1,000 per month. If they are combined into one unit for a total cost of \$20,000, what is the rent of the new, larger unit?*

**A** “When two rent-stabilized apartments are combined, a new unit is created,” said Sherwin Belkin, a Manhattan lawyer who represents property owners. “The new rent is not the combined rents of the former apartments, nor is the amount of money that is expended in combining the apartments relevant.” Instead, he said, because there is no previous rent history for the new combined unit, the owner may legally charge rent at the market rate. The new apartment would continue to be governed by rent stabilization rules unless that new rent was \$2,500 or more.

**A Man Living in a Storage Room**

**Q** *It is common knowledge in our Manhattan co-op that our superintendent allows his brother to live in a storage room in the basement. Many shareholders believe this is a serious liability risk to the co-op, but the board allows it to continue. What can be done?*

**A** “Allowing the superintendent’s brother to live in a basement storage room creates several potential liability issues,” said Stephen M. Lasser, a Manhattan co-op and condominium lawyer.

For a basement room to be legally occupied, Mr. Lasser said, it must satisfy lighting, ventilation, drainage, painting, ceiling height and egress requirements of the New York City Housing Maintenance Code. “Failure to satisfy these requirements could result in violations’ being imposed against the co-op and the imposition of fines,” he said, “as well as present a safety issue for the brother and even the other occupants of the building.”

### **Noisy Neighbor Needs Some Rugs**

*Q I live in a co-op with a lease provision that each unit must be 75 percent carpeted. My neighbors have an empty studio next to mine, yet their four sons, one dog, and seemingly all the children in the building use it as a gym. Because it is empty and uncarpeted, I can hear every bounce of their basketball. What can I do?*

**A** “It sounds like the absence of carpeting in the studio is a clear breach of the house rules,” said Aaron Shmulewitz, a Manhattan co-op and condo lawyer. The rules also typically contain a separate prohibition on excessive noise. “The shareholder should write a letter to all of the board members and the managing agent notifying them of these conditions, and demanding that the cooperative enforce the house rules,” he said.

If it fails to do so, the shareholder can mount a campaign to elect new directors. “Some shareholders could even threaten to, and possibly even proceed to, withhold maintenance payments for the cooperative’s breach of the warranty of habitability — the failure to provide a quiet residence,” he said. He noted that although withholding maintenance is normally prohibited by a typical proprietary lease, as a practical matter it is often the only vehicle by which shareholders can assert that a co-op has failed to enforce such requirements. That failure can be used as a defense if a nonpayment eviction proceeding is brought by the co-op in Housing Court.

Email questions to [realestateqa@nytimes.com](mailto:realestateqa@nytimes.com). Answers can be given only through the column.

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