

November 3, 2011

## Q & A

By JAY ROMANO

### A Big Jump in the Rent

*Q We live in an apartment in the city that is not rent-stabilized or controlled. The landlord is raising our rent by over \$600 a month. I am 69 years old. We have been living here many years. Do we have any options?*

**A** Samuel J. Himmelstein, a [Manhattan](#) lawyer who represents tenants, says that if the apartment is not rent-regulated, there is no cap on how high the landlord can raise the rent, regardless of the tenant's age or the length of the tenancy. "If the landlord and the tenant are unable to reach an agreement on the amount of the rent," Mr. Himmelstein said, "the landlord can bring an eviction proceeding, and it will just be a matter of time before the tenant will have to leave." It is possible, though, that the apartment is stabilized and the tenant does not know it. He or she should go to the state [Division of Housing and Community Renewal](#), at 25 Beaver Street in Lower Manhattan, to get a copy of the rent history to determine whether the apartment is regulated.

### An Assessment for Hallway Work

*Q A few shareholders who are trying to sell their apartments have convinced our co-op board that a hallway renovation would increase their apartment values. Others see the renovation as not necessary, and any appreciation in value as not worth the \$4,000-to-\$7,000 assessment that will be charged. When asked if the shareholders could vote on whether to proceed, the board said no. Can the shareholders stop the assessment?*

**A** Eric D. Sherman, a Manhattan real estate lawyer, says that co-op bylaws almost always give boards the authority to impose assessments without the need for a shareholder vote. "This is irrespective of whether certain shareholders cannot afford the assessment or do not get a direct benefit from the renovations," Mr. Sherman said. Moreover, under the "business judgment rule," the board's decision will not be second-guessed by a court, provided the assessment is imposed in good faith. Mr. Sherman noted, however, that it would be prudent for the writer to check the co-op's governing documents to see whether there was a way to challenge the assessment. If a shareholder found the cost of the assessment burdensome, he or she might ask permission to pay it in installments.

## **When an Owner Illegally Sublets**

*Q I live in a 90-apartment co-op building. The two ground-floor apartments are owned by dentists who legally use their apartments as dental offices. One is a “sole practitioner,” but the other has three other dentists who also use his office. I believe that the owner of the apartment with the four dentists is basically subletting and should be paying the sublet fee required by the proprietary lease. Am I correct?*

**A** Alan L. Kazlow, a Manhattan co-op and condominium lawyer, said that if the proprietary lease for the apartment used by the four dentists listed only one dentist as the tenant, then the occupancy by the other dentists probably would be in violation of the lease. The co-op board, he said, has a few choices. It can allow the owner of the apartment to continue to sublet, in return for any sublet fee that may be due; it can enforce the proprietary lease and force him to get the other three dentists out of the space; or it can terminate the lease.

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