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Q & A

By JAY ROMANO

‘Great’ Condo, With Stabilized Tenant

Q I have found a great condominium to buy, but it is occupied by a rent-stabilized tenant. The broker says I would need to renew the lease every time the tenant wanted it renewed. I’ve read, though, that if an owner wants to use the unit for himself after purchase, then the owner is able to evict the tenant with 90 to 150 days’ notice. I want to use the apartment for myself. Can I evict the tenant?

A The short answer is: probably not.

Adam Leitman Bailey, a Manhattan real estate lawyer, says that under certain circumstances, an owner of a building with a rent-stabilized tenant can evict the tenant if the owner wants to use the apartment himself, though the rules governing this are complex.

But those buying apartments in co-op or condo buildings converted under a noneviction plan — the most common type of conversion — may not recover the apartment for personal use, according to Mr. Bailey. “Under a noneviction plan,” he said, “the apartment remains rent-stabilized and the tenant only can be evicted for reasons like nonpayment of the rent, misconduct and failure to use the apartment as the primary residence.”

Mr. Bailey noted that apartments occupied by rent-regulated tenants are generally sold for much less than other unregulated apartments, because these units can be used only for investment purposes until tenants leave, and even then there may be family members entitled to succession rights to an apartment.

Roof Deck for a Penthouse Owner

Q In our new condominium, a penthouse buyer received a portion of a roof deck that, according to the condo bylaws, is part of the common elements. Can a sponsor sell part of the common area without the consent of the other unit owners?

A Eric D. Sherman, a Manhattan co-op and condominium lawyer, says it is possible that the portion of the roof deck that abuts the penthouse is a limited common element rather than a general common element. “This is an important distinction,” he added.

If it's a limited common element, access to the area is properly limited exclusively to the penthouse unit owner. But if the portion of the roof deck at issue is designated as a general common element, then all unit owners are entitled to equal right of access. "In the latter case," Mr. Sherman said, "the sponsor would be in breach of the governing documents if the space was sold to the individual unit owner."

He noted that on certain occasions, sponsors reserve the right in the offering plan to recategorize certain space, and turn a general common element into a limited common element. Therefore the offering plan and bylaws would have to be carefully examined to determine whether the sponsor's actions are permitted.

Homeowner Unable to Refinance

Q We bought our house almost seven years ago for \$240,000 with 100 percent financing at 6 percent. Although property values in the area have fallen, the balance on our mortgage is now about \$200,000. We have had no late payments and our income has almost doubled, but it doesn't look as though anyone is willing to refinance the mortgage at a lower rate. What is the problem?

A "The days of easy 100 percent financing are just about over," said Oded Ben-Ami, a senior loan officer for Sterling National Bank in Great Neck, N.Y., pointing out that mortgage lending guidelines have tightened significantly over the last few years. While acknowledging that some programs allow for slightly higher loan-to-value ratios, he said that "as a general rule, the maximum allowed financing is now 95 percent of the property value under Fannie Mae guidelines." Because of that change, and falling property values, it isn't surprising that the writer is having difficulty refinancing.

Email questions to realestateqa@nytimes.com. Answers can be given only through the column.