

July 31, 2005

Q&A; Restrictions on Sales in a Condo

Q. A recent column in the Real Estate section referred to a New York State court ruling that appeared to give condominium boards greater flexibility in adopting restrictions on sales of units that go beyond the simple right of first refusal ("Your Home," June 19, "Court Backs Condos on Sale Restrictions"). Our board is concerned that low interest rates and aggressive lenders are making apartments affordable to buyers who may have trouble down the road if interest rates increase. Does this recent case suggest that a bylaw change limiting the extent of financing may now be allowed? ... Stewart Halpern, Manhattan.

A. Arthur I. Weinstein, a Manhattan co-op and condominium lawyer who is familiar with the case referred to by the letter writer -- *Demchick v. 90 East End Avenue Condominium* -- said that traditionally, the major difference between co-ops and condominiums has been the belief that condominiums are easier to sell because co-op boards have broader powers to prevent a sale.

"Indeed, many purchasers opted to buy condos rather than co-ops because of those differences," Mr. Weinstein said. But, he said, the court in the *Demchick* case appears to have provided condo boards with the ability to impose "reasonable" restrictions on the sale and leasing of condominium units. "And it is likely that the courts will find more restrictions on condominium sales and leases to be permissible 'reasonable restrictions,'" he said.

Accordingly, he said, a condominium bylaw provision that sets forth clear and reasonable economic criteria as a prerequisite for board approval of a sale would have a good chance of being upheld by the courts.

A Monthly Sublet Fee In a Co-op

Q. I would like to know whether a co-op can charge a monthly fee when a shareholder sublets an apartment. I can understand paying a fee to the board for interviewing the prospective subtenants, but I am being required to fork over an additional \$60 in maintenance fees each month for having a renter. The building is not providing any additional service for my subtenant. So is it legitimate for them to charge me a monthly fee when no additional service is being rendered? Jake Leibovich, Forest Hills, Queens.

A. Alexander Suslensky, a Manhattan co-op lawyer, said that the relationship between the owner of a co-op apartment and the co-op corporation is governed by the terms and provisions of the proprietary lease. And most proprietary leases, Mr. Suslensky said, provide that subletting requires the consent of the board and that such consent may be subject to any conditions the board may impose.

So, he said, if the proprietary lease contains such a provision, the board probably can impose a fee even if the fee is not specifically provided for in the lease. But, he said, if the lease does not provide the board with the authority to impose conditions on its consent, then the fee would be prohibited.

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