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Real Estate Q & A

By JAY ROMANO Published: October 11, 2013

New Rule Affects Home Businesses

Real Estate Q & A

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Q. Our co-op has a new house rule barring shareholders who have home-based businesses from having clients or customers come to their apartments. This is in direct conflict with the lease, which states that we may have any home occupation permissible under local zoning laws. How can we persuade the co-op board to rescind this rule? And if we can't, what can the board do if we

violate it?

A. If a new rule materially alters a shareholder's rights and obligations, it may not be enforceable, because, it can be argued, it is an impermissible change to the terms of the contract between the co-op and the resident, according to Matthew J. Zangwill, a Manhattan real estate lawyer.

A co-op's proprietary lease is the principal document that sets forth the dos and don'ts of daily living in a co-op, and the house rules are usually part of the proprietary lease. The lease, which is a contract between the co-op and the tenant/shareholder, usually gives the board of directors the power to adopt new house rules without the consent of the shareholders, Mr. Zangwill said. But a new rule would not be enforceable if it changed the terms of the contract.

Reverse Mortgages for Co-ops

Q. I've been hearing conflicting information about reverse mortgages and co-ops. Some say that reverse mortgages have been available to co-op shareholders for several years, while others say that they are not. Please clarify the current situation.

A. Reverse mortgages are generally unavailable to co-op apartment owners, according to Arthur I. Weinstein, a Manhattan lawyer who is the vice president of the Council of New York Cooperatives and Condominiums. This is because most banks tend to sell all residential mortgages to one of the various federal housing agencies, like Fannie Mae or the Department of Housing and Urban Development; but there are no federal regulations permitting these agencies to buy reverse mortgages secured by co-op shares and proprietary leases.

"There may be some banks or other lenders willing to make reverse mortgages that the lender would hold rather than sell," Mr. Weinstein said, referring to what are known as portfolio loans.

But there are few, if any, lenders willing to make reverse mortgage loans on co-ops, given

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the likely length of time before a lender would realize any profit on such a loan.

Who Pays to Replace a Kitchen Floor?

Q. *Why are tenants responsible for the replacement costs of kitchen floor coverings? One would consider flooring as essential as sinks, commodes, stoves or refrigerators.*

A. Generally tenants are not responsible for replacing kitchen floors.

"I am assuming that 'kitchen floor covering' is some form of tile, vinyl or linoleum," said Thomas P. Higgins, a Manhattan landlord-tenant lawyer. "If that is the case, I cannot say why a tenant should have to pay for its replacement under a standard residential lease."

Usually, Mr. Higgins said, a project replacing kitchen flooring would be a significant capital improvement to the premises, the type of alteration that would not be permissible by a tenant without the landlord's approval.

"I can only assume that the existing floor covering in this kitchen is functional, but that this tenant — for aesthetic purposes, perhaps — wants it to be changed," he said. In that case, the tenant is being made responsible for the cost of the work because, if the tenant did not agree to pay for the work, the landlord would not do it, he added.

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