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# Real Estate Q & A

By JAY ROMANO

## A Noisy Condo Courtyard

**Q.** *My husband and I own a condo in [Brooklyn](#). Our terrace overlooks a walled-in common-area courtyard with a concrete surface. Many families and children use it as a playground, and it is even rented out for parties. All this results in a great deal of noise. The rules forbid the use of scooters and bicycles in the common areas, but they are being used in the courtyard. I have asked the board of managers to enforce the rules, but it won't because there is disagreement in the building about how this area should be used. Can the board be forced to enforce the rules?*

**A.** Probably not, said Howard Schechter, a [Manhattan](#) co-op and condominium lawyer. “The board of managers may be authorized by the bylaws to make rules and regulations and to enforce them,” he said. “But that doesn’t give a unit owner the right to compel the board to enforce the rules they made.”

Rules relating to the use of the common areas, Mr. Schechter said, could be contained in either the bylaws, which the board cannot change on its own, or the “house rules,” which the board can make or change as it sees fit.

The writer’s options depend on whether rules for the common areas are addressed in the bylaws or the house rules. If the latter prohibit the use of bicycles and scooters in the courtyard, it is up to the board to decide whether or not to enforce them, or even change them. As for the bylaws, Mr. Schechter said, they generally make common elements like courtyards available for the use of all unit owners. They may also specify an “intended use” for an area. But if they specifically prohibit the use of bicycles and scooters in the courtyard, a unit owner can start a court action against the board to enforce the prohibition against bicycles and scooters.

Beyond that, the board has the power to allow the unit owners to use the space as a play area or for parties.

## Neighbors’ Refuse in a Garden

**Q.** *I recently bought a garden apartment in a brownstone co-op that is next to a large rental building. When I started working on my garden, I noticed that an amazing number of cigarette butts were being thrown out the windows of the rental. What is the best way to motivate the owner of the building to deter tenants from throwing the butts into my yard?*

**A.** Most apartment leases in [New York City](#), including the basic form published by the [Real Estate Board of New York](#), include a provision that tenants shall not throw items out of the windows or dispose of trash outside of the building except in places designated by the owner, said Matthew Zangwill, a Manhattan real estate lawyer.

The writer should ask the co-op board if it has had any past dealings with the owner of the building next door, and can prevail upon him or her to advise the tenants that such actions violate their leases. If the owner isn't cooperative, the board can warn that failure to take responsibility for the actions of his tenants may result in the filing of a court complaint against him for creating a nuisance. If the board will not cooperate with the writer, Mr. Zangwill said, the writer can consult with a lawyer to discuss whether filing her own complaint against the next-door owner would be practical.

### **Leaky Air-Conditioner Causes Problems**

**Q.** *I own a co-op that has a terrace with a retractable awning. The shareholder above me has an air-conditioner that drips large amounts of water onto the terrace. Even with the awning open, there is a constant waterfall — and she leaves the air-conditioner running whether she is home or not. I have complained to management, but it has done nothing. What are my rights in this situation?*

**A.** The co-op may be responsible for addressing the problem, even if another shareholder is the cause of it, according to Eric D. Sherman, a Manhattan real estate lawyer. "The 'warranty of habitability' protects all residential tenants in New York, including co-op shareholders with proprietary leases," he said.

So if the water coming from the upstairs air-conditioner deprives the writer of the use of the terrace or creates any health or safety problems, the co-op is responsible. "If the co-op fails to address the leak in a timely manner," he said, "the reader may be entitled to a reduction in maintenance payments that are proportionate to the severity of the leak, for as long as the condition exists." Alternatively, Mr. Sherman said, the writer can sue the upstairs shareholder directly for any damage caused by the leak.

Submit questions to Q & A by e-mail to [realestateqa@nytimes.com](mailto:realestateqa@nytimes.com).