

REAL ESTATE

# When a Commercial Tenant Isn't Welcome

Ask Real Estate

By RONDA KAYSEN    MAY 2, 2015

*Ask Real Estate is a weekly column that answers questions from across the New York region. Submit yours to [realestateqa@nytimes.com](mailto:realestateqa@nytimes.com).*

## **Suing to Keep a Restaurant Out**

*The board of my condominium instituted a special assessment to cover the costs of a lawsuit brought by our building seeking to prevent a restaurant tenant from occupying the commercial space on the ground floor. Can a condo board use an assessment to force owners to pay for a lawsuit even if some of us do not support the lawsuit?*

*Financial District, Manhattan*

For many New Yorkers, a neighborhood restaurant is practically an extension of their kitchen — delivering “home cooked” meals to their door in Styrofoam containers. But that does not mean people actually want to live above one. Several co-ops and condos have sued to keep restaurant tenants out, balking at the prospect of excessive noise, crowds and odors. In your neighborhood, a condo board at 150

Nassau Street filed a \$10 million lawsuit in 2013 to stop Denny's from opening a diner in the building. (The restaurant opened there after the matter was settled out of court, and now offers a \$300 version of its Grand Slam breakfast with Champagne.)

These lawsuits are not uncommon, partly because condo boards are allowed to sue on behalf of the building or on behalf of two or more unit owners for problems having to do with common elements or with more than one unit. In your condo's case, the board presumably filed the lawsuit on behalf of the building, even if some owners disagreed with its merits. Condo bylaws also allow condo boards to collect common charges and special assessments. "The condo board has substantial power," said Douglas P. Heller, a Manhattan real estate lawyer.

Unless your condo's bylaws expressly require a unit owner vote to authorize litigation, the board can pass an assessment to cover legal costs, according to Marc Luxemburg, a Manhattan lawyer who represents condos and co-ops. And it would be difficult to challenge its decision because of the business judgment rule, which gives boards wide latitude in making decisions.

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### **Buying Sans Broker**

*My husband and I want to buy an apartment in Manhattan. My husband, who is a lawyer, obtained a broker's license in New York. We would like to buy without a buyer's broker to save on any broker fees, but are unsure how complicated this will be. Finding apartments seems easy, so what value does a buyer's broker add? Would it be worthwhile and effective to buy without one?*

*Upper West Side, Manhattan*

As a buyer, you are not obligated to work with a real estate broker, but there is not much upside to going it alone. Since sellers generally pay the fee for both the seller's broker and the buyer's broker, you would not save on closing costs, although you would certainly create more work for yourself. It is possible that you could shave some money off the sales price because only the seller's broker would collect a

commission, but that would happen only if the seller was willing to come down in price. In a seller's market, that scenario is unlikely. If your husband is hoping to collect a commission, don't bank on it: Many sellers' brokers would balk at the idea of splitting it with someone who is not a member of the Real Estate Board of New York.

"There is some snobbery in the larger firms — they don't want to deal with someone who isn't in a firm," said Doug Perlson, the chief executive of RealDirect, which provides buyers with a commission rebate of up to 1 percent of the purchase price.

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Finding (and getting) an apartment in New York involves more than just scouring listings. You have to make a competitive offer, possibly survive a bidding war and present an application package that will win a co-op or condo board's blessing. Working with someone who does this every day could provide you with some useful objective advice. "It's helpful to have somebody who can stand back and act for you — in the same way that, if you were a surgeon, you wouldn't want to operate on your own family," said Margery N. Weinstein, a real estate lawyer.

A seller might be reluctant to accept an offer from a buyer who is not represented by a broker, especially if there are multiple bids. Brokers also can keep the trains moving. They can ensure deadlines are met and can let professionals like appraisers into the apartment on your behalf. Without a broker playing the role of gatekeeper, a seller might not hand you the keys to get such tasks accomplished before the deal closes.

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### **A Crowded One-Bedroom**

*I am a tenant in a rental building. The family in the one-bedroom above mine includes two adults, a teenager and a 1-year-old baby. They make noise until midnight. Calls to building management have done nothing to quiet them down. In*

*addition to noise violations, are they also violating any occupancy rules? Are four people allowed to live in a 550-square-foot one-bedroom in the city?*

*East Harlem, Manhattan*

Neither teenagers nor babies have reputations for being particularly quiet. Nevertheless, they live in apartments all over the city, frequently in small ones. City rules require each person in a unit to have 80 square feet of livable space. (Hallways, bathrooms and foyers are not included in the calculation.) And for every two adults legally occupying an apartment, one child under the age of 4 may also live in it. In other words, four people can live in a 550-square-foot one-bedroom, according to Paul Gruber, a Manhattan real estate lawyer.

Most leases prohibit tenants from making excessive or annoying noise and require most of the floor area to be covered (usually 80 percent of it). The city noise code also prohibits unreasonable noise. But it might be hard to prove that the everyday noise of a family is excessive. Added to that, judges are reluctant to evict tenants for moderate noise violations, according to Bradley S. Silverbush, a lawyer who specializes in landlord-tenant litigation.

You could ask the family to settle down or enlist the super. Ask the landlord if the floor covering rule is being enforced, as carpets should muffle some sounds. You could call the police, but Mr. Silverbush warned, first ask yourself, "If the police arrive, will it sound to them from the hallway like it sounds to me, underneath the apartment?" If not, don't make the call.

Submit your questions to [realestateqa@nytimes.com](mailto:realestateqa@nytimes.com)

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