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## Limited Garage Spaces, Very Attractive Rates

By JAY ROMANO

*Q. I am the owner of a condominium in Rego Park, Queens. The building has 150 units and only 40 garage spaces. The spaces are rented for only \$44 a month; that rate has gone up only once in 25 years. At the same time, the common charge goes up every year an average of about 6 percent. There is a waiting list of more than five years for a space.*

*Is it fair that a majority of unit owners subsidize the garage rents of so few? Most board members have spaces. Would this be an example of a board violating its fiduciary duty?*

**A.** Dean Roberts, a Manhattan co-op and condominium lawyer, said parking rights in condominiums are often a disputed issue.

“Based on the question, I am assuming that the parking area is a common element of the condominium, that there is no specific allocation of parking spaces to unit owners stated in the condominium’s offering plan, and that there is no set price for the spaces in the plan,” Mr. Roberts said.

“Members of the board of managers, just as directors of the board of cooperatives, are protected under New York law by the business judgment rule,” Mr. Roberts said. “This is a court-created doctrine which holds that short of fraud, the day-to-day decisions of a board are not subject to legal review.”

In this case, he said, the board is collecting rents and the parking spaces are apparently processed in a standard manner. Thus, the board’s decision to set the parking rent at the current rate would be protected by the business judgment rule and would not be subject to legal review.

While the unit owner may not be able to pursue a legal action based on these facts, Mr. Roberts said, the board’s action could certainly make a strong campaign issue for the next annual meeting, where board elections are held.

*Address questions to Real Estate Q&A, The New York Times, 620 Eighth Avenue, New York, N.Y. 10018, or by e-mail to [realestateqa@nytimes.com](mailto:realestateqa@nytimes.com). Answers can be given only through the column.*

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