

October 10, 2004

Q & A

## A Neighbor Is Using My Downspout

**Q** Is it legal for my neighbor to use my downspout? The other buildings on our block have their own downspouts, but my neighbor has tapped into our downspout with a lateral branch from his drain. I would like him to install his own downspout and remove this lateral branch. . . . Thomas Ching, Brooklyn.

**A** Alexander Suslensky, a Manhattan real estate lawyer, said that to answer the question it must first be determined whether the downspout is on the letter writer's property. "A survey of the property will disclose that information," he said.

If the downspout is on the letter writer's property, Mr. Suslensky said, then it must be determined whether the neighbor has a claim of right to use the downspout under the legal doctrine of adverse possession.

"A party may make a claim of adverse possession if the party occupies the property or uses it openly and notoriously and by claim of right for at least 10 years," Mr. Suslensky said.

He noted that if the downspout is on the letter writer's property, and the neighbor has not obtained the right of adverse possession to the drain, the law in New York protects the letter writer if it can be proved that the neighbor has diverted water onto the writer's property "by artificial means."

"New York courts have defined the term 'artificial means' to include the use of pipes and drains," Mr. Suslensky said. "And the neighbor's side branch seems to clearly fall within the definition."

In any case, he said, the letter writer can file a lawsuit against the neighbor alleging nuisance and trespass.

**Q** I own a one-bedroom co-op in Brooklyn. I would like to transfer ownership of my shares to a son who does not live with me. What is the best way to do this? . . . Dolores Raab, Brooklyn.

**A** Andrew Brucker, a Manhattan co-op lawyer, said that while some co-ops allow for unfettered

transfers of co-op shares between family members, most co-ops require board approval for all transfers, including those within a family.

If the letter writer's co-op requires board consent, Mr. Brucker said, the son would have to complete an application, disclose his financial information and perhaps even attend a board interview. "The board would then have the right to approve or reject the transfer for any reason or for no reason," he said, adding, however, that transfers may not be rejected for reasons deemed to be discriminatory on the basis of race, gender, marital status or other similar factors.

"The letter writer should check with the co-op's managing agent to determine how to accomplish the transfer and should not be surprised to learn that such a transfer requires consent of the co-op board," Mr. Brucker said.

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