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Q & A; When a Co-op Building Commandeer a Terrace

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Q. *Our terrace is the staging area for work on the co-op's facade, rendering it virtually unusable. Are we entitled to a maintenance reduction?*

A. **Adam Leitman Bailey**, a Manhattan real estate lawyer, said that while a co-op's governing documents might give a shareholder exclusive use of a terrace, the typical proprietary lease will also provide that the co-op has the right to enter that space to make repairs to the building without any compensation to the shareholder.

"But New York law supersedes these contractual provisions," he said, "and depending on where the building is located, the law provides for a partial or total maintenance abatement resulting from the loss of the use of an exclusive terrace space under the legal theory of 'actual partial eviction.' " If there is no deprivation of use, but mere inconvenience, that will not qualify for a reduction in maintenance.

Court cases on this issue have been mixed. Decisions by courts with jurisdiction over Manhattan and the Bronx, for example, have pro-rated the loss of space and calculated a reduction in the maintenance. In the other three New York City counties, complete loss of even a few square feet of the terrace for days at a time could mean the cancellation of the maintenance payments for those days. In some cases when the loss of the space is caused by repairs needed to comply with building or safety codes, no reduction or cancellation of maintenance has been ordered.