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Exclusive Use Common Area - The Basics

By: Kelly G. Richardson

In condominium living, one area of much confusion and consequently dispute revolves around the concept of exclusive use common area. What is it, who controls it, and who takes care of it are often bones of contention between residents and their association. Many disputes can be avoided by making sure that the owner, the board and the manager understand exclusive use.

When owning a condominium, each member owns a separate interest called a "unit" and shares with all members the ownership in everything that is not units. The "everything else" is called "Common Area." Exclusive Use Common Area is a subset of the Common Area. There are many parts of a condominium building which are outside of the boundaries of the units, but clearly are designed for the use and enjoyment of only one unit. These parts are called "Exclusive Use Common Area." Exclusive use common area may be defined in three separate places.

1. The Condominium Plan or subdivision Map may define some exclusive use common area items, such as patios, balconies or sometimes parking spaces.

2. The Covenants, Conditions and Restrictions ("CC&Rs") recorded on the project may also contain a definition of exclusive use common areas.

3. Lastly, the Davis-Stirling Act, at Civil Code Section 1351(i), contains the default definition, if the governing documents do not fully cover the topic. Under this statute, unless the governing documents state otherwise, exclusive use common area includes:

   "Shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest."

Fixtures serving a single unit but existing outside of the boundaries of the unit may include plumbing pipes, water heaters, or air conditioning equipment, for example.

Even though the exclusive use common area is for the exclusive use of one owner, it is not exclusively controlled by that owner … the homeowner association still has the ability to control how that area is used. Therefore, an association may have rules about what may be stored on a patio or balcony, for example. All too often, members are not told that exclusive use is not exclusive control, and a misunderstanding on that subject may result in conflict between neighbors or between a member and the association. Boards would do well to remind members of this fact prior to considering discipline against non-compliant members. Perhaps many of the non-compliant members simply do not understand that their right to use their patio, for example, is not unlimited.

Who maintains exclusive use common area? Who repairs it? Is the broken window, or the leaky water heater, an association concern or not? This is one of the most frequent topics requiring the expense of attorney opinion letters. First, the lawyer determines whether the area in question is or is not exclusive use common area. The next question is who maintains it and who repairs it, and this can vary significantly from association to association. This topic often is covered in the association governing documents.

However, if the CC&Rs do not clarify the issue, we again turn to the Davis-Stirling Act to fill in the missing pieces. Civil Code

Section 1364 says that the association repairs, replaces and maintains common area other than exclusive use common areas, unless the governing documents state otherwise. One would assume then that members are to repair, replace and maintain their respective exclusive use common areas. However, to exclusive use common areas, the section only says that the member is responsible to maintain it. So who repairs and replaces exclusive use common areas? Most legal practitioners resolve this hole in the statute in favor of the member, and opine that the association is required to repair and replace exclusive use common area items, unless the governing documents state otherwise. To fill this hole, many associations amend their governing documents to clarify this issue.

A board of directors may still need an attorney opinion letter to help resolve disputes or questions in this area. But many basic questions can be answered by following the analysis in this column.

Richardson & Harman, pc
234 East Colorado Boulevard ▪ Suite 800 ▪ Pasadena, California 91101
(626) 449-5577 ▪ Fax (626) 449-5572
www.rh4law.com