

EXCLUSIVE USE COMMON AREA – The Basics

By: Kelly G. Richardson

In condominium living, one area of much confusion (and consequently disputes) involves exclusive use common area. What it is, who controls it, and who takes care of it are often points of contention between residents and their association. Many disputes can be avoided if the owner, the board and the manager understand exclusive use common area.

The condominium owner 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 portions of a condominium building which are outside of the boundaries of the units, but are clearly intended 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 defines 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; and
3. 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.”

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

Even though exclusive use common area is exclusively used by one owner, it is not exclusively controlled by that owner...the association still has the ability to control how that area is used. Therefore, there may be association rules about what may be stored on a patio or balcony, for example. All too often, members do not know that exclusive use is not the same as exclusive control, and this can cause conflict between members 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 exclusive use common area 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 attorney opinion letters. The lawyer normally starts by determining whether the area in question is or is not exclusive use common area, and then analyzes who maintains it and who repairs it — and it may not be the same answer.

If the CC&Rs do not answer the question, the Davis-Stirling Act fills in the blanks. Under Civil Code Section 1364, the association repairs, replaces and maintains common area other than exclusive use common area, and the member maintains exclusive use common area, unless the governing documents state otherwise. Who then repairs or replaces the exclusive use common area? The section only says that the member must maintain it. 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.

So, "use" is not the same as "control," and maintenance responsibility may be different than repair responsibility. Recognition of this will help reduce association conflict.

Quick Tip: Read California law yourself at www.leginfo.ca.gov/calaw.html. For the Davis-Stirling Act click on "Civil Code" then on "Search." Scroll down to the sections starting at 1351, where it starts.

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