



What is “Exclusive Use Common Area”?

By Kelly G. Richardson, Esq. CCAL

Condominium owners often misunderstand exclusive use common area, and this leads to far too many wasteful disputes. Simply put, exclusive use areas are not “your” property, but property you use which is jointly owned (and therefore controlled) by all association members. What is it, who controls it, and who takes care of it are often disputes which can be avoided by providing owners, boards and managers a better understanding of it.

Condominium owners own separate interests called “units,” and share ownership with all members in everything which is not a unit. The “everything else” is called “common area,” and exclusive use common area is a subset of common area. There are many portions 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 owner. These parts are called “Exclusive Use Common Area”.

Definitions of exclusive use common areas can be found in either the Condominium Plan, the CC&Rs, or in the Civil Code. Civil Code Section 4145 provides the default definition, if the governing documents do not fully cover the topic, which 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 water heaters, or air conditioning equipment, for example.

Many condominiums are bought with the mistaken belief that the exclusive use area, such as perhaps a balcony, is “theirs” and the HOA cannot dictate how it is used. However, it is still common area, and the association can limit how the homeowner uses that area. Therefore, associations often have rules regarding use of particular exclusive use areas, such as balconies or patios. Many non-compliant members may simply not understand that their use of exclusive use common area is not unlimited.

Who maintains exclusive use common area? Who repairs it? Is the broken window or leaky water heater an association concern? The inquiry usually starts by determining if the area in question is exclusive use common area, followed by an analysis of who maintains it and who repairs it -- and the two responsibilities might be placed upon different parties.

However, if governing documents do not answer the question, the Common Interest Development Act fills in the missing pieces. Under Civil Code Section 4775, the association repairs, replaces and maintains 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? Section 4775 only says that the member *maintains* it. Most HOA lawyers have for years said that since exclusive use is a subset of common area, there is no gap, and that associations repair and replace exclusive use common areas, *unless the governing documents state otherwise*. In 2017, Section 4775 will change, confirming this HOA responsibility. Many associations have amended their governing documents to address this subject.

“Use” is different than “control”, and maintenance responsibility may be allocated differently than repair responsibility. Exclusive use is a necessary complication of shared ownership, but better understanding will reduce conflict.

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