

Who is Responsible for a Limited Common Element?

By Julie Warren



The sidewalk, the road, the park bench, the elevator, the streetlights, and more belong to and benefit everyone in a homeowners association. These common areas or common elements are shared property maintained by the association and enjoyed and used by all residents. The money for repairing and replacing these elements comes from the community's operating budget or reserves, which are funded by everybody's collective annual assessments.

Condominium balconies, parking spots, roofs, and sometimes even windows and doors—while designated for the exclusive use of one resident—also are considered part of a community's infrastructure. But who is responsible for maintaining and repairing a common element that's used by only one household?

The resulting disputes happen more often than you might imagine and are diverse and complicated to resolve. But according to some attorneys in this business, the answer to most of the conflicts are readily available.



Defining Limited Common Elements

“There’s exactly one thing that determines if something is a limited common element,” says Adam Cohen, an attorney with Pullman & Comley in Hartford, Conn. “And that’s if the (association’s) declaration says it is.”

“Maintenance, repair, and replacement of a limited common element is usually the responsibility of the association except to the extent the declaration shifts that duty to the unit owner,” writes Cohen in “What Exactly Is a ‘Limited Common Element?’ ” a 2012 article in [Common Interest magazine](#), a CAI Connecticut Chapter publication. “Some declarations make the unit owner completely responsible for replacing windows and doors, while other declarations say the unit owner need only remove leaves and snow from the front porch but is not responsible for substantive repairs.”

It’s essential that board members, attorneys, and community managers look to an association’s [covenants, conditions, and restrictions \(CC&Rs\)](#) for the definition of their limited common elements—and who has the responsibility for their upkeep.

State statutes also are good resources in identifying limited common elements and who’s responsible for them, says Marshal Granor, principal at Granor Law Firm in Horsham, Pa., and a fellow in CAI’s College of Community Association Lawyers. “A limited common element’s definition can vary based on the original builder or developer’s concept,” says Granor. “It also might have been changed over time by the association.”

Granor also concedes that it’s possible an association’s CC&Rs—or even the state statute—were written in a way that gives the association board the authority to assign limited common elements. “I like this approach because it’s awful if you have to get a super majority of owners to vote that Mrs. Smith’s deck is a limited common element,” Granor says. “You just don’t get that kind of (owner) involvement most of the time.”



Obvious Limited Common Elements

Although Cohen is adamant that “a limited common element is whatever the declaration says is a limited common element,” he concedes that Connecticut's statute also indicates that “certain things are presumed to be common elements unless the declaration says otherwise.”

“Balconies are the most recognizable limited common elements,” according to Colin Horner, CMCA, AMS, PCAM, former general manager at Fairlington Villages Unit Association in Arlington, Va.

Unseen Limited Common Elements

But who—unit owner or association—is responsible for the wiring or plumbing pipes found throughout a condominium? The owners who live within such a community expect them to work. After all, the pipes transport hot and cold water and gas into a unit and remove wastewater, and the wiring provides electricity, cable, and internet service. The pipes and wiring run throughout the building and, at some point, enter the unit within the studs.

Assuming an individual's ownership in a condominium is from the studs in, who is responsible for the maintenance and repair of the plumbing or wiring beyond the studs? Also, critical, if the association is liable for remediating a leaky pipe, does it have the right to access it through an individual homeowner's property to make repairs? If an association's CC&Rs are ambiguous, it's essential for homeowners to correct that and make them more specific.

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