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BREAKING DOWN LIMITED COMMON ELEMENTS BY: ROBERT PRINCE

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Limited Common Elements - The Law

Sec. 4.1. Construction, interpretation, and validity of Condominium Instruments.

➔ (a) Except to the extent otherwise provided by the declaration or other condominium instruments:

(1) The terms defined in Section 2 of this Act shall be deemed to have the meaning specified therein unless the context otherwise requires.

(2) To the extent that perimeter and partition walls, floors or ceilings are designated as the boundaries of the units or of any specified units, all decorating, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors or ceilings and all portions of perimeter doors and all portions of windows in perimeter walls shall be deemed part of the common elements.

(3) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements.

(4) Subject to the provisions of paragraph (3) of subsection (a), all space and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

➔ (5) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, perimeter doors, windows in perimeter walls, and any other apparatus designed to serve a single unit shall be deemed a limited common element appertaining to that unit exclusively.

(6) All provisions of the declaration, bylaws and other condominium instruments are severable.

Limited Common Elements - The Law

Section 9 of the Act (excerpt)

(e) The condominium instruments **may** provide for the assessment, in connection with expenditures for the limited common elements, of only those units to which the limited common elements are assigned.

Takeaways

- The Condo Act's interpretations of the Declaration only apply to the extent that the Condominium Instruments (the declaration, bylaws or plat) do not address the issue.
- If the Condominium Instruments do not address the issue, anything that is designed to serve a single unit is a limited common element.
 - Important - If an item is designed to serve multiple units, it is not a limited common element under this interpretation.
- Charges for limited common elements may be billed back to the units that benefit from them if the Condominium Instruments state that they can.



Common Declaration Provision

Definition of Limited Common Elements (usually found in Article I and further explained in Article III)

- **LIMITED COMMON ELEMENTS**: A portion or portions of the Common Elements which are designated by this Declaration or the Plat as being a Limited Common Element appurtenant to and for the exclusive use of Owners of one or more, but less than all, of the Dwelling Units. Any balcony, porch or patio adjoining or serving a Dwelling Unit shall be a Limited Common Element appurtenant to such Dwelling Unit. Without limiting the foregoing, the Limited Common Elements assigned and appurtenant to each Dwelling Unit shall include the following ("Exclusive Limited Common Elements"): (a) perimeter doors (including garage doors) and windows which serve the Dwelling Unit, (b) the interior surface of perimeter walls, ceilings and floors which define the boundary planes of the Dwelling Unit, and (c) any system or component part thereof which serves the Dwelling Unit exclusively to the extent that such system or component part is located outside the boundaries of the Dwelling Unit.

REMEMBER - If the Declaration does not address the items contained in Section 4.1 of the Act, they are deemed to be Limited Common Elements.



Default Standard on Obligation to Maintain, Repair and Replace LCEs

Section 18.4(a)(1) of the Condo Act states that the Board has the general duty to maintain, repair and replace the common elements.

This by default includes limited common elements

Owners, in the Declaration or Bylaws, will be responsible for the maintenance, repair and replacement of their units.

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Are Owners Responsible for Limited Common Elements?

Section 9(e) requires the Condo Instruments to provide direction on the ability to make Owners responsible for Limited Common Elements, which can come in several forms:

Sometimes, the obligations categorically broken down and the association has some discretion

[Split by Category.pdf](#)

Sometimes, the Owners are only responsible for limited items

[Owner Limited Obligations.pdf](#)

Sometimes, the Owner is responsible for all LCEs

[Owner Resp for All.pdf](#)

Sometimes, the governing docs are silent and Assn is responsible



LIMITED COMMON ELEMENT ANALYSIS

Step 1 – Check to see if the Declaration has a definition for LCEs

If so, review and use definition and go to Step 2.

If not, review Section 4.1 of the Condo Act and go to Step 2

Step 2 – Determine what categories, if any, the Association can charge back or make an owner responsible for:

If silent, the Association is responsible for LCEs

If gives the Association discretion to either: 1) do work at its own cost, 2) do work and charge back or 3) require owner to do work, do what it says or , if multiple options, make your choice

Be Consistent

If says Owner is responsible to do work at Owner's cost, make sure they do



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