



## Condominium Law Q&A

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**Question** – We have a 16 unit condominium and very limited parking. There are 8 garages along the side of the condominium. The owners who do not have a garage, park in numbered spaced out front. One of the absentee owners bought a garage from another absentee owner and gave the numbered space in front to the former owners of the garage so they would have parking for their tenants. The garage that was bought is one of two that have been posted no parking because of their proximity to the garbage dumpster. The have been posted for at least the past 15 years and there was an understanding that the area would be left open so the garbage truck, which needs to come in at an angle, can empty the dumpster twice a week. The new garage owner decided to rent out the garage to someone not in our condo to store a trailer. The garage owner now wants the tenants of the unit they are renting out to be able to park behind the garage 24-7, which would be in the way of the garbage removal. We contend that the driveway apron is common property and that we have a right to limit parking, since the inside of the garage is where the owners of the garage should be parking. The new garage owner states that her tenants do not have to park inside the garage but can park in front of it, even though we need that area clear for garbage removal. Do we have any recourse in this matter? There is no other place to move the garbage dumpster on the property. Thanks. J.R., Melbourne Beach

**Answer** – Parking spaces are defined within the declaration of condominium as being either a

“common element” with full control of its use being within the discretion of the Board, or as “limited common elements,” reserved for the exclusive use of the unit owners to whom they are assigned. If the latter, then you need to also verify from the condominium documents if an assigned parking space is an “appurtenance” of the unit to which it is assigned. If it is, then without express authority within the declaration of condominium, the assigned parking space cannot be transferred to another unit owner. If the garage, which is marked “No Parking” is in fact a limited common element appurtenant to the unit to which it was assigned, then the Association cannot preclude the unit owner from using it. On the other hand, unless there is specific authority within the condominium documents, a unit owner does not have the right to rent his/her parking space to either another unit owner or a non-unit owner. The unit owner absolutely cannot rent the space and have his/her tenant park behind the garage on the common elements, blocking access to the dumpster. If the unit owner does not voluntarily remove the unauthorized non-owner’s trailer from the garage and require his tenant to park in the garage space, the Association, through arbitration or court action, can compel the unit owner to do so.

**Question** – I live in a 24 unit condominium. There are three owners who have dogs over the weight limit of what our documents state. (Owners, guests

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or lessees are not permitted to have any animals as pets on the condominium property, except for cats and dogs which shall be restricted to small animals to be held in the owner's lap, and weighing less than 20 pounds.) All of the owners mentioned have dogs that are over 20 pounds. At an owners' meeting, they voted to up the weight to 40 pounds. Isn't this against the documents, and since it is in the documents, wouldn't

it have to be amended? Please explain this so it will be understood. D.B., New Smyrna Beach

**Answer** – To change the weight restrictions would require an amendment to the declaration of condominium at a duly noticed meeting by the requisite vote required by the condominium documents to amend the declaration. ■

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*Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) and has served as its President since the inception of the Firm. He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.*

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