



## Condominium Law Q&A

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**Question** – Our condominium of 189 units contains 18 boat slips defined by the declaration of condominium as being common elements. Destroyed by a hurricane, the docks were rebuilt by the association and/or the unit owners using them, with the expense assessed as a common expense. While I understand the term common elements, I believe those unit owners who do not use, and will never use the docks, should not have to pay for them. Some residents do not use the pool, many don't play tennis, but at least those common elements are available to them. The boat docks are neither accessible nor available to all. Can the documents be amended to impose the cost of dock maintenance solely on those using same? P.B., Daytona Beach

**Answer** – At the time a developer creates the condominium, it is given broad latitude insofar as defining use of and maintenance of the common elements. Some common elements, such as parking spaces or storage bins, are reserved for the exclusive use of a unit owner, yet the maintenance is deemed to be a common expense assessable against all unit owners. In other cases, the use of the common elements is reserved for the exclusive use of unit owner(s) [“limited common elements”], and the cost of maintenance is exclusively that of the unit owner with the exclusive use right. Examples include unit balconies, terraces and covered parking spaces. The Condominium Act gives the drafting attorney/developer broad discretion when establishing the process for maintaining the common elements and limited common elements. The

documents are not engraved in stone and can be amended. One court of appeal affirmed the action of a condominium which amended its declaration to shift the burden of maintaining the unit balconies from all unit owners to the unit owner with the exclusive use. The key to the decision was the determination that the amendment did not change the manner or percentage of sharing the common expenses and, therefore, could be done by the vote to amend the declaration, as opposed to 100% of the unit owners.

**Question** – We live in a 120 unit housing for older persons condominium where we now have several owners conducting various businesses from their units. They range from real estate and financial planning to contractors. Our Declaration of Condominium, under Use and Occupancy Restrictions, Units, states: “Each unit shall be occupied and used by a family, its servants and guests, as a single family residence and for no other purpose.” Does this wording preclude the operation of a business within the units, or are other clauses required to ban business operations in Condominiums? A.J.N., Port St. Lucie

**Answer** – Yes, the language of the covenants precludes unit owners from conducting commercial activities from their units. That said, let's deal with the reality of controlling commercial activity in today's virtual world. Millions of individuals now work from their homes, linking on line through the Internet and other computer networks. For the most part, their activities are unnoticed and non-intrusive.

Their conduct does not bring traffic into the community, nor does it increase external threats to the community and, therefore, should be permitted. On the other hand, some unit owners have been caught running mail order houses and other businesses, including storage of goods, out of their units. In some cases, delivery trucks flow goods in

and out of the community, daily. Such activity needs to be stopped, and the boards should take immediate action to stop the commerce, in order to protect the tranquility of the community, the safety of the residents; and the integrity of the covenants.

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