



Condominium Law Q&A

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Question – Could you tell me if the following is Limited or Common Elements? We have a storage area in our condo that has only a few spaces, so not everyone can have a space for themselves. The condominium rents the spaces on a monthly basis. We have been told by the county that we are in violation of the regulations regarding licensing, insurance and the immobility of many of the vehicles stored. They want the mess cleaned up and the regulations brought up to date, or the condominium and all the people who own here will be fined. Below is a section of our Declaration of Condominium. Does it mean that it is a limited element we are talking about, and therefore the people who have the spaces should be charged for the violations, or a common element where everyone must pay for the violation? “Limited Common Elements ...mean and include those common elements which are reserved for the use of certain units, to the exclusion of all other units, or to the use of the Developer exclusively as set forth on the recorded plat.” Thank you for your kind response. L.W., WPB

Answer - Every condominium consists of two basic elements, the unit and common elements. (When title to recreation or other amenities is held in the name of the Association, it is known as “Association Property.”) The “unit” or “apartment,” as it is commonly called, is the part of the condominium property owned by individual unit owners. If you extract the cubes of air which are included within the units, everything else is part of the “common elements,” or the property owned in common by the

unit owners. Parts of the common elements are reserved for the exclusive use of one or more unit owners; those are known as “limited common elements.” The determination of whether a common element is limited or general is established by the declaration of condominium. From what you have described, it sounds as if the storage spaces which are being rented are in fact part of the common elements. While the board's leasing of the spaces may be totally in conformity with the Condominium Act, local zoning ordinances and land uses trump the condominium documents. Thus, if the county code prohibits storage of immobile vehicles, then the county code will control.

Question - I thought I read somewhere that condominium associations, which are having difficulty in collecting maintenance fees from unit owners, would now be allowed to file appropriate action to garnish wages? Since the only recourse right now for many associations is to lien unit owners, it obviously does nothing to alleviate the increasing financial burden caused by those unit owners who continue to be in arrears, yet also continue to live in their units if they pay their mortgages. I read through the new legislation that just came out for 2008, but it did not address this issue. Do you know anything about this? Thank you. M.M., Fort Pierce

Answer - When an association files a foreclosure action, it is generally against both the property and the individual unit owners. In that way, in the event the unit mortgagee forecloses, the association can

still obtain a monetary judgment against the unit owners. If the association is successful in obtaining a monetary judgment, it can then proceed with post-judgment procedures to collect its judgment. While garnishment is among the remedies available, a unit owner's wages are rarely susceptible to being attached due to the extensive debtor protection afforded by Florida Law, including protection for the head of a household.

Question - I'm president of a 242 unit condo complex in Florida. Construction of the 14 buildings was completed between March 2004 and May 2005. Our condominium declarations say, "A Unit Owner may lease his or her Unit on such terms and conditions as such Unit Owner may determine, provided that the lessee shall be bound by all terms and conditions of the Condominium Documents." They also say, "The Units shall be used for single-

family residences only. This provision will not prohibit the use of one Unit by two or more families or from renting on a short term basis." I get numerous request to require at least 6 month rentals. How can such a change be made, and how can it be enforced after the rule change is made? R.B., W.P.B.

Answer - The Condominium Act was amended, effective October 1, 2005, to provide that "any amendment restricting unit owner's rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment." Properly enacted amendments to the declaration affecting the use of units are enforceable through Division arbitration.

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