



## Condominium Law Q&A

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**Question** - I am a condominium owner, and I feel the my property rights have been violated. I would love to hear an explanation about s.718.108 (1 (a) and (b), Florida Statutes, related to my personal issue with my Association:

718.108 Common elements.--

(1) "Common elements" includes within its meaning the following:

(a) The condominium property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.

If my balcony closet is within my unit as stated in subsection (a) above, I feel that both my cable (as it relates to my neighbor below me) as well my neighbor's cable above me, are trespassing over the property rights of others. This was caused by the board of our association for allowing the cable provider to install the cable in Building #5, while in Buildings #2 and #3, the cable was installed vertically outside, in the back of the building, and by drilling at the height of each unit, the cable went thru each closet with "no unlawful trespassing." Previous cable service (when building was built, 1979) was placed "within the walls," which, as I understood it, is "common area," professionally

placed out of sight and out of the way. Today, this cable crosses the closet and the path of many units, because it was placed outside our balcony (lanai), just over a 2 ½ inch step. I demanded that they bring it from above the closet and sliding door, risking a fine and foreclosure. When I commented to the cable service guy, he lied to me, saying that was the old wire going to the next floors above, without knowing what I already knew. So, if the cable provider is lying is because they know they did wrong, what should be my next step? L.K., West Palm Beach

**Answer** – Accepting the facts as you present them as being correct, I agree that the cable company does not have the right to cross through your units ( as opposed to the common elements) without your permission. To the extent that the wiring is obstructing your use of the closet, or is unsightly, you can compel the cable installer to relocate it. Quite frankly, I don't feel the alternative of running the cable down the outside wall is aesthetically beneficial to anyone. Therefore, if I were you, I'd try to figure out if there is a way in which it can be run within the balcony closet in a manner that does not interfere with your use of the closet.

**Question** - Article IV of our Condo Docs, titled, "Apartment boundaries, common elements, and limited common elements," states ( I will paraphrase): "There are limited common elements appurtenant to each of the units in this condo, such

as covered balconies, directly accessible only through an individual unit.” Why would my glass enclosed patio (I live on the bottom level of a 2 level/6 unit condo) inside my condo, be listed as a “limited common element?” Why is the patio any different than the bathroom? The 6 unit patios originally were screened in, but not enclosed with glass. The documents do state, “The area is reserved for my exclusive use.”

The same article continues, “All expenses of maintenance, repair or replacement relating to such limited common elements or involving structural maintenance, repair or replacement, shall be treated as and paid for as a part of the common expenses for the Association”. This makes no sense to me. This area is completely enclosed and for the private use of each condo owner, (to do what they will with the area). Why should the association pay for anything in this area, (realizing the condo docs treat this area as limited common area, and that is probably the reason). The Condo docs date back to the

late1970s. Your assistance is as always appreciated.  
D.M.S., Cocoa Beach

**Answer** - The determination as to whether an improvement to the condominium property is part of a unit or a limited common element is totally within the discretion of the developer, made at the time the condominium is created. Improvements, which are reserved for the exclusive use of a unit, are often defined as limited common elements because it gives the association greater control over the element. Classic examples of limited common elements are the balconies, patios, parking spaces, storage units and boat slips. The cost of maintaining limited common elements can be either the responsibility of the association as part of the common expenses, or the unit with exclusive use rights, as determined by the declaration of condominium. Once the documents define the rights and responsibilities, they normally cannot be changed without the prior approval of a super majority of the unit owners and the unit owner affected.

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