



Condominium Law Q&A

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Question – Our association has one assigned numbered parking space for each unit. There is an auxiliary lot for parking a second vehicle if needed. Our rules are that the second vehicle may be parked in another unit owner's numbered space if that unit owner grants permission to do so. Our condo association has just ruled that our vehicle must now display a decal that will identify that it is indeed a vehicle owned by a unit owner or resident. But the second vehicle must pay a fee for a permit to park in the auxiliary lot or in the numbered space that permission was granted by that unit owner. I am aware of Florida Statute 718.111(4) which states that the association may not charge a fee for use of common elements or common association property. I believe that charging a fee for the second vehicle is in violation of Florida Statute 718.111(4). I am not sure that the Board can charge a use fee for a unit owner's assigned numbered space but the board claims that they can do so. We are a condo association of 140 units and I am not alone in having a second vehicle. Our condominium was formed in 1972 and we never had to pay a fee until now. There is no mention of any fee in our documents or in any of the Rules that the new Board revised in March of this year. Could you please offer your opinion with regard to this matter? H.G., West Palm Beach

Answer – The Condominium Act (718.111(4)) states that the association may not charge a use fee against a unit owner for the use of the common elements or association property unless otherwise provided for in the declaration, or by a majority vote

of the association or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property. Thus, using the aforesaid for authority, the association can charge a use fee for assigning excess parking spaces for a unit owner's exclusive use. However, I don't see that extending to charging a fee where a unit owner who isn't using their parking space allows another to do so.

Question – I live in an HOA of 136 homes. We have a small clubhouse, two tennis courts, a small pool and parking for 5 cars only. Do homeowners who rent their property on an annual basis retain the right to come and use the common areas/amenities even though their renters are using the amenities also? C.J., Delray Beach

Answer – Good Question. Not if you live in a condominium. The Condominium Act expressly prohibits dual use of units and amenities. The HOA Act does not address the issue. The members should amend the CC&Rs to prohibit.

Q. We live on the top floor of a three story building (ten units per floor). Each unit is separated by a continuous fire wall that runs from the floor of each unit to the roof line of each unit. Each third floor unit has A/C ducts, exclusive water lines and electrical lines, recessed light fixtures, bath fans and a common fire sprinkler line. Each unit has a single 24" x 24" access hatch located in the walk-in closet of each unit. You must enter each individual unit to gain access to the attic space above the unit. No

other access is available to service people or anyone else outside of the unit. There are no serviceable elements in the attic space. The fire sprinkler heads are serviceable from within each unit if needed and not from the attic.

Our unit was rebuilt after suffering extensive damage from Hurricane Frances. During the rebuilding we decided to remove the free standing 40 gallon hot water tank and install an energy efficient on-demand hot water system. The installation was permitted and inspected by the local building department. The unit has been in service for three years with no issues.

Recently, we encountered a problem because the water was turned off to the building and our on-demand water heater failed and caused a leak. The damage was minor but water drained into the two units below our unit through the service chase holes in the A/C unit closet floor. Now the HOA board is demanding that we remove the on-demand unit from the "common" attic space because we are in violation of the declaration. The Board approved our work when we requested modification to our unit prior to the hurricane damage.

What defines limited use common space and what is common space? Is the attic space accessible only from our unit "usable attic space" for our on-demand

water heater regarded as limited common space? Can the board now force me to remove the water heater? Again, installed with permits, approved by the city, granted permission by the board to make improvements to the unit. The heater was never specifically called out in the "improvement" but we were granted broad permission by the board to make major changes to over 80% of the unit. J.L., Winter Haven, FL

Answer – There is an arbitration decision in which the State of Florida Division of Condominiums, Timeshares and Mobile Homes, in addressing an almost identical question as to the right of a unit owner to take possession and use of attic space above their unit, solely accessible through their unit, but defined as "common elements" could not do so. Personally, I did not agree with the finding. In your case you advise that the association gave written permission for the improvements made. I seriously doubt, under those circumstances, that they would be able to persuade a court of the need for you to remove your unit from the attic. Every day of the week there are water leaks between units caused by A/C drain lines, shower pans and overflowing sinks and tubs. The answer is not to remove all sources of potential water damage (which, of course can not be done), but rather to make sure that both the association and unit owners carry adequate insurance.

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