

# What Exactly is a “Limited Common Element?”

## Common Interest

We’ve all heard the term and used it frequently. It seems to mean something that’s not quite part of the “unit” but also not fully “common.” So what, exactly, is a “limited common element”?

The Common Interest Ownership Act (CIOA) defines a “limited common element” as “a portion of the common elements allocated ... for the exclusive use of one or more but fewer than all of the units.” The key phrase here is exclusive use. Like other common elements, a limited common element is owned jointly by all of the unit owners (in a condominium) or by an organization of which all the unit owners are members (in a planned community or cooperative). But unlike other common elements, the use of a limited common element is restricted to only certain unit owners. While ownership is shared, use need not be. The resident of a unit assigned a limited common element can refuse to allow anyone else to enter, use, or alter it under most circumstances, just as though it was part of the unit itself.

The community’s declaration is required to specify what is and is not a limited common element. Conventional examples include a unit’s driveway, garage, mailbox, or attic. A few communities have elevators, parking areas, or amenities which are allocated for particular buildings or clusters of units. Unless the declaration says otherwise, ducts, wires, bearing walls, and similar fixtures which straddle a unit boundary are limited common elements to the extent they serve only one unit. Also, windows, shutters, exterior doors and doorsteps, porches, patios, balconies, and other features designed to serve a single unit although located outside its boundaries are also limited common elements unless the declaration says otherwise.

Converting an existing common element into a limited common element can be accomplished under the normal procedures for amending the declaration. But once the declaration assigns a limited common element to a unit, that clause cannot be amended by the other owners without the consent of that unit’s owner. Unit owners who have limited common elements are also generally free to reallocate them amongst each other by signing an amendment to the relevant portions of the declaration, which the association must accept and file in the land records. Unless the declaration says otherwise, the unaffected unit owners do not have any say in such a change.

Although the unit owner can exclude others from routine use of a limited common element, the Executive Board and its agents will usually have the right to enter and access a limited common element for inspections and repairs in emergencies or after reasonable notice, just like the unit itself. The Board cannot, unlike ordinary common areas such as a clubhouse, charge special fees for renting or using limited common elements or deny a resident the use of his own limited common element for failure to pay his assessments. The Board does nevertheless retain rulemaking authority over the use, appearance, and upkeep of these areas like other common elements for the benefit of the community as a whole.

Maintenance, repair, and replacement of a limited common element is usually the responsibility of the association except to the extent the declaration shifts that duty to the unit owner. For example, some declarations make the unit owner completely responsible for replacing windows and doors, while other declarations say the unit owner need only remove leaves and snow from the front porch but is not responsible for substantive repairs. Nevertheless, the declaration can also require that the maintenance expense for a limited common element be allocated solely to the unit or units to which it is assigned. In such case, although the association would arrange and pay for the repairs in the first instance, the benefitted owners would then have to reimburse the association for that expense through special assessments.

Communities frequently run in to problems when declaration provisions or past practices are unclear as to what exactly constitutes a limited common element, who is entitled to use them, and whether the unit owner or association must pay for their upkeep. Read your declaration carefully and follow it closely to make sure that your community is allocating these responsibilities appropriately and consistently.