

10--What Are Limited Common Elements?

Under the New Act and Old Act, limited common elements or areas are defined as a subset of common elements or areas.¹ Specifically, limited common elements are the portion of common elements (owned by everyone) that are designated in the Declaration for use by fewer than all Units.² The Declaration may permit certain “limited common elements” to be treated as common elements or as part of the Unit.³

Common Elements Versus Limited Common Elements

Limited common elements are a subset of common elements. Limited common elements are allocated, in the Declaration or by statute.⁴ Limited common elements are parts of the common elements that serve only one or some Units. Except as provided by the Declaration, all chutes, flues, ducts, wires, conduits, bearing walls, bearing columns, and other fixtures serving only one Unit, and lying “partially within and partially outside the designated boundaries of a unit,” shall be limited common elements.⁵ (We don't know why “pipes” are not listed, but believe water and drain pipes are included in this list.) Portions of the building components serving a single Unit are designated as limited common elements allocated solely to the Unit they serve, while portions of the building components serving two or more Units or “any portion of the common elements” are designated as common elements.

All shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures that are designed to “serve a single unit” but are not located within the boundaries of the Unit shall be limited common elements allocated exclusively to the Unit they serve.⁶ Because limited common elements are a subset of common elements, a Declaration stating that windows and doors are common elements does not conflict with the statutes. If a Declaration is otherwise

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silent about windows and doors, they are limited common elements assigned to the Unit they serve.

With some exceptions, the Declaration is required to specify the limited common elements and the Units to which all limited common elements are allocated.⁷ An Association is permitted to modify its existing definition of "limited common elements" only to the extent that every Owner giving up a limited common element, or being assigned a limited common element, agrees.

The Old Act does not specify that any building components are limited common elements. "Common areas and facilities" are defined to include "all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use."⁸ Under the Old Act, everything outside the Unit boundary is a common element, and each Declaration may specify some common elements to be limited common elements.

Limited Common Elements: Spaces or Things?

"Limited common elements" can be spaces or things. Parking spots are an example of "spaces" that are frequently defined as "limited common elements" in an Association's Governing Documents.⁹ Parking spaces are essentially blocks of air surrounded by common elements and lines drawn on pavement. In most cases, the boundary of the limited common element is the surface of the pavement, and not the pavement itself.¹⁰

Similarly, unless your Declaration says otherwise, limited common element balconies and patios are spaces surrounded by common element building components. Most Declarations don't specify the boundaries of limited common elements. In that case, we will most often apply the boundary of a Unit. Thus, the boundary of a limited common element balcony is usually the interior of the unfinished surfaces around it. The structure of a balcony, and its handrail, are not a part of the limited common element space.

Windows and doors are examples of things (building components) that can be "limited common elements." Unless the Declaration

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specifically provides otherwise, the building components (wires, conduits, windows, etc.) are part of the limited common elements.¹¹

The Declaration could provide more things be allocated as limited common elements. Handrails serving decks, and even deck coatings and deck structures could be specifically allocated in the Declaration as limited common elements.

Assessments for the Repair, Maintenance, and Replacement of Limited Common Elements

The exclusive right to use a limited common element is not the same as an obligation to pay for maintenance and repair of the limited common element. The Declaration may impose assessments for limited common areas against individual Owners.¹² However, these assessments must be expressly authorized by the Declaration. In most Declarations, repair costs for limited common elements are a common expense for the Association, because repair costs are not specifically assigned.¹³

Some Declarations may require the Owners of assigned Units to pay for expenses incurred to repair, maintain, or replace limited common elements. Because limited common elements are a subset of common elements, Declarations may impose on individual Unit Owners assessments for expenses related to the upkeep of limited common elements.¹⁴ Declarations may also require all expenses incurred to repair, maintain, or replace limited common elements to be assessed as expenses that only benefit some Owners. The assessments must be imposed in accordance with the terms specified in the Association's Declaration. The Board may have the authority to undertake repairs to and replacement of limited common elements, then bill Owners for the costs, but only if this is specified in the Declaration.

Associations may not normally undertake repairs, maintenance, or replacement of building components located within the Unit boundaries since these are not "common elements" or "limited common elements." Expenses related to the upkeep of these items are the sole responsibility of the individual Unit Owner.

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Building components that are outside the Unit boundary, and not defined as limited common elements, will be assessed as a common expense. No Washington court has addressed this specific question, but case law from other states provides some insight into the reasoning that may be applied. In Cedar Cove Efficiency, the court held that an Association was “obligated to provide repair and maintenance [to doors and balconies] as the board may deem appropriate” when the Declaration was inconsistent with respect to whether doors and balconies were “limited common elements” or fixtures within the vertical boundaries of a Unit.¹⁵ Since the Governing Documents did not specify how expenses for limited common elements would be assessed and limited common elements constituted a subset of common elements, the court held that the Association had the authority to assess all Owners for the costs of repairs to balconies that it deemed necessary to the structural integrity of the building.¹⁶

¹ The HOA Act does not define “limited common elements” and the term has no real application outside of condos.

² The New Act default definition of unit boundaries is as follows:

“The walls, floors, or ceilings...and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof...and all other portions of the walls, floors, or ceilings are part of the common elements.” RCW 64.34.204(1)

The Old Act definition of unit boundaries is contained within the definition of “apartment” in RCW 64.32.010(1). In relevant part:

“The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both portions of the building so described and the air space so encompassed.”

³ RCW 64.34.204 provides:

Except as provided by the Declaration:

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- (1) The walls, floors, or ceilings are the boundaries of a unit,...
- (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
- (3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

⁴ RCW 64.34.020(27). ("Limited common element' means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.")

RCW 64.90.010(30). ("Limited common element' means a portion of the common elements allocated by the declaration or by operation of RCW 64.90.210 (1)(b) or (2) for the exclusive use of one or more, but fewer than all, of the unit owners.")

⁵ RCW 64.34.204(2). ("If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.")

RCW 64.90.210(1)(b). ("If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.")

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⁶ RCW 64.34.204(4). ("Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.")

RCW 64.90.210(3) ("Any fireplaces, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit")

⁷ RCW 64.34.228

- (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.
- (2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may only be reallocated between units with the approval of the board of directors and
- (3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans.

RCW 64.90.240

- (1)(a) Except for the limited common elements described in RCW 64.90.210 (1)(b) and (3), the declaration must specify to which unit or units each limited common element is allocated.

(b) An allocation of a limited common element may not be altered without the consent of the owners of the units from which and to which the limited common element is allocated.
- (2)(a) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may be reallocated between units only with the approval of the board and by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made.

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(b) The board must approve the request of the unit owner or owners under this subsection (2) within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board to act upon a request within such period is deemed an approval of the request.

(c) The amendment must be executed and recorded by the association and be recorded in the name of the common interest community.

(3) Unless provided otherwise in the declaration, the unit owners of units to which at least sixty-seven percent of the votes are allocated, including the unit owner of the unit to which the common element or limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation must be reflected in an amendment to the declaration and the map.

⁸ RCW 64.32.010(h).

⁹ See, e.g., *Bellevue Pacific Center Ltd. Partnership v. Bellevue Pacific Tower Condominium Owners Ass'n.*, 171 Wn. App. 499, 517 (2012) (Declaration defined nine parking spaces as "limited common elements").

¹⁰ *Id.* The Declaration in *Bellevue Pacific* did not designate the specific owners to which each of the individual nine spaces was to be allotted, but the nine spaces were collectively defined as "limited common elements" because they could be assigned later.

¹¹ *Lisali Revocable Trust v. Tiara de Lago Homeowners' Ass'n.*, 155 Wn. App. 1043 (2010) is an example of how RCW 64.34.204(4) will operate when the Declaration is silent with respect to how fixtures are defined. *Lisali* involved a dispute over the costs to repair patio doors and windows. The court held that the sliding glass doors were "limited common elements" under the New Act (and thus that the owner was responsible for all costs associated with repairing them under the Declaration).

¹² RCW 64.34.360(3)(a) ("To the extent required by the declaration: Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is

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assigned, equally, or in any other proportion that the declaration provides..."

RCW 64.90.440(1). ("Except to the extent provided by the declaration, subsections (2) and (4) of this section, or RCW 64.90.470(8), the association must maintain, repair, and replace the common elements, including limited common elements, and each unit owner must maintain, repair, and replace that owner's unit.")

¹³ *Leo v. Diana Court Owners Association*, 1 Wash.App.2d 1002 at *5 (Wash. App. Ct. 2017). ("The Declaration does not provide for assessments for limited common areas. Because the Declaration does not so provide, RCW 64.34.360(3) does not authorize the imposition of assessments for limited common areas.")

¹⁴ In *Cedar Cove Efficiency Condominium Ass'n., Inc. v. Cedar Cove Properties, Inc.*, 558 So. 2d 475 (Fla. Dist. Ct. App. 1990), the court, construing a statute similar to Washington's Condo Acts, held that "[t]he Act's definition of 'limited common elements' implies they are a subset of 'common elements' and therefore a 'common expense' properly within the scope of the association's authority. Washington's Condo Acts, like the Florida Condo Act, similarly define "limited common elements" as a subset of the common elements.

¹⁵ 558 So. 2d at 479.

¹⁶ *Id.* at 480.