

Chapter 3- The Property

Condominium are, by and large, about the property itself. As noted in the very beginning, in Condominium World if you live in a condominium, you have to give up some personal freedoms for the benefit of other guarantees. You get to do certain things in your Unit and the Association controls certain other areas. As such, it is important to know what you control, what the Association controls, and how to work with one another.

A. The Units¹

Condominium associations are divided into but two entities: Units and Common Areas. The Units are what the Common Area is not.

Of course, it is not quite as simple as that. A Unit is not just comprised of the four corners of the Unit. Rather, a Unit is the Unit itself as well as the Unit's share of the "undivided interest in the common area."² This may sound silly, but without owning (in common with all other owners in a condominium association) a part of the Common Area, no owner would have the right to get to their Unit as the property over which they would have to travel to get to their garage or front door would not be their property. So everyone one owns, along with everyone else, a small portion of the Common Area.

But to help define what a Unit is a bit more, one can and should rely on the language of the Condominium Act, which defines a Unit as "a portion of the condominium designed and intended for individual ownership and use."³

i. Boundaries.

One would think we all know what the boundaries of a unit are, i.e. the walls, floor and roof. So simple, and yet so wrong.

The Condominium Act actually sets some guidelines as to what the boundaries are.

To the extent that walls, floors, and/or ceilings are designated as the boundaries of the units or of any particular units without further specification, all doors and windows therein, and all lath, wallboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors, and/or ceilings shall be deemed a part of the common area.

RSA 356-B: 12, II.

¹ There are, of course, forms of condominium ownership that are not Units, such as parking spaces and boat slips. But this discussion shall be limited to what we commonly think of as condominium ownership, i.e. a Unit.

² RSA 356-B: 3, VII.

³ RSA 356-B: 3,XXIX.

In English, this means that unless the Declarant specifies other boundaries, by default, the boundary of the Unit is the studs of the building. In other words anything attached to the boards or metal that defines the structure of the building, is the Owner's responsibility, such as the sheetrock, paneling, tile, and drop ceilings.

Read carefully, what the Act also says is that the suggested boundaries are just that, suggestions. The Declarant can change the boundaries as he or she sees fit. It's important what the boundaries are because that determines, with some exceptions, maintenance responsibility. And Declarants certainly do play with the suggested boundaries. So it is also important when either purchasing a Unit or determining what is your responsibility to maintain and repair and what is the Association's, to look at the actual boundaries the Declarant created for the Units.

The most common change from what the Act suggests to what Declarants do are the descriptions of who is responsible for the doors and windows. As established by the Act, the doors and windows are a Unit Owner responsibility. But frequently the Declarant has changed this to give the Association control over the doors and windows. This is a good idea.

One of the last things an Association will want is control given to the Owners who can then have a nice mahogany or oak door, next to a hollow core plywood door, next to a metal door. One will be stained, another not treated at all, and another lime green.

The same thing happens with windows. Uniformity is one of the keys to keeping values high. Having windows with panes that have four sections on each of the upper and lower halves of the windows, next to eight over eights, next to full pane windows, causes a problem as it just doesn't look nice.

Combine that with the orange and lime green doors and the place starts to look just not nice enough to spur potential buyers to look elsewhere, causing the values to decrease.

In those cases where the boundaries of the doors and windows are indeed drawn such that they are the responsibility of the Owner, Boards still have the right to dictate what materials and paints are to be used. Language such as this helps: "Notwithstanding anything to the contrary herein, the Board maintains control over the size shape, quality and color of the doors and windows."

Another common issue is what to do about shutters, awnings, and other items that are clearly not within the Unit, but are attached to the Unit. Technically, they are on the outside of the Unit and should be pure Common Area. This means that anyone could come and plant flowers in your flower box, for instance. Or anyone could come and open your bulkhead.

Again, the Act provides guidance.

Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common area appertaining to that unit exclusively.⁴

⁴ RSA 356-B: 12, V.

Consequently, such things as porches, balconies and bulkheads are, unless otherwise designated by the Declarant, Limited Common Area, so the Owner controls what can be done to them subject to guidance from the Board, but no one else can touch or otherwise manipulate them.

One minor, but important point. As a general rule, limited common area is to be described in the Declaration and listed on the site plan. A careful read of the section quoted above makes clear that porches, doorsteps, patios and balconies are automatically limited common areas of the unit those areas serve. Why not just label them on the site plan? Most likely to cure any drafting oversights. One can only imagine the problems that would occur if this were not the case. It would, by definition, be part of the Common Area, meaning anyone could walk onto your balcony, porch, etc. You might want to invite a neighbor for a barbecue, but that should be your choice, not their right.

Additionally, one of the common questions is what about garages and garage doors? There is a misconception that they are different from a Unit. They are not. A garage wall is a Unit wall, and a garage door is still a door, so the boundaries that hold for the rest of the Unit regarding walls and doors will hold for the garage as well unless separately defined in the documents.

Finally, what is to be done about pipes and wires that serve a unit, but are outside the boundaries of a Unit? It would seem a bit unfair to other owners to have to pay for a sewer pipe that is clogged by Owner A's use, when Owner B has never, obviously, used Owner A's sewage system. Again, the Act provides guidance.

If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lie partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common area shall be deemed a part of the common area.⁵

So, unless the Declarant has done something markedly different, the usual scenario is for an owner to be responsible for those infrastructure items that serve only that Owner's Unit, no matter where the items are.

1. Changing Boundaries

First, an Owner cannot simply change the boundaries of a Unit by, for example, putting an addition onto his Unit. That would be taking what was outside of the Unit, e.g. the grass and air, and bringing it inside the boundaries of the Unit. A taking. Of Common or Limited Common Area. And that's not allowed without a lot of problems.

However, if two Unit Owners wish to rearrange the boundaries between two units, they can. And they do not even have to ask permission, but they do have to pay money.

⁵ RSA 356-B: 12, III.

Here's the process⁶:

- The Owner has to ask the Association in writing.
- The Board should require, in writing, a design from a qualified contractor.
- The Board requires each contractor to provide the Board with a certificate of insurance that also names the Association as an additional insured. (Why should the Association have to pay for any injuries if an Owner wishes to rearrange boundaries?)
- The Board prepares an Amendment to the Declaration noting the alteration of boundaries.
- The Board prepares and sign an Agreement noting the change in boundaries.
- The document also includes any change in percentage of ownership, unless all Units share an equal percentage
- The Board prepares new, updated site/floor plans that reflect the changes in boundaries
- Owners pay for all costs
- Once the Owners pay, the Board gives them the new plans and documents.
- The Owners file the new plans and documents with the Registry of Deeds.
- Once filed, and only once filed, the changes become valid.

It's not a hard process, but it has to be followed step-by-step otherwise chaos reigns. The good news is the Act lays things out well, as noted above.

Finally, what if a Unit Owner decides to purchase two adjoining units and wants to knock down a wall or put in a large door so that two Units essentially become one Unit? In theory that would be a change or alteration of the Units, requiring all of the other steps as noted above in order for the Owner to have a large, peaceful place to call home. Fortunately, the Legislators thought of this.

If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common area, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common area other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of RSA 356-B:31.⁷

2. Subdivision of Units

Slightly different is the situation where someone wants to take their unit and divide it into two or more units. Strangely, this can happen. But, of course, there is a process.

First, there has to be language somewhere in the Declaration or Bylaws that allows someone to divide their Unit. Why? People have purchased into, and banks have loaned money

⁶ RSA 356-B: 32.

⁷ RSA 356-B; 30, II.

on, an association with a set number of condo units. Also, adding more units can require a change in voting powers and the amount of assessments given to each Unit. So changes are not to be taken lightly. Hence, “(n)o unit shall be subdivided unless the condominium instruments expressly permit it.”⁸ Of course, if someone really wants to sub-divide a Unit and the documents do not expressly permit it, the Owner can always seek to amend the documents to expressly permit it.

To make sure the process is done in the best interest of the Association, not the Owner, once notice is received of a request to subdivide, here’s what has to occur⁹:

- Association prepares amendment to the Declaration assigning new identifying numbers to the new units
- Association assigns new undivided interest in the common areas (either equally, by percentage square footage or by value)
- Any limited common area assigned to the original unit, such as parking or a balcony is not further divided, but is shared equally between the subdivided units, unless the subdivider as indicated otherwise in the application in which case the subdivider has to indicate who gets what of the limited common area;
- Any limited common area assigned to the original unit is the maintenance responsibility of the Owners of the subdivided unit jointly and severally (meaning the Association can go after the Owners of the subdivided unit for maintenance, collections etc. individually or together), unless in the application the original Owner has indicated otherwise
- The Association allocates “on a reasonable basis acceptable to the subdivider” the votes in the Association;
- New site plans and floor plans are drafted to reflect the changes;
- After the subdivider pays for all costs, the Association gives them to the subdivider for recording at the Registry of Deeds, at which time they become effective.

It’s a lot of work, at a lot of cost, but it can be done. Interestingly, although there is language to allow for such subdivisions, there is no language that allows a subdivision to revert back to the way it was. It’s like trying to unring a bell.

3. Alterations Within Units

Generally, what an Owner does in his or her Unit regarding making alterations such as putting in a new floor or a new wall is not subject to approval of the Association. Of course, as we have learned, everything revolves around the language contained in the Declaration or Bylaws. So, unless there is language that restricts or limits what can be done inside a unit, then any improvements or alterations are left to the discretion of the Unit Owner.¹⁰

⁸ RSA 356-B: 32, I.

⁹ RSA 356-B: 32.

¹⁰ RSA 356B: 30, I.

Be careful, though. While you may put in a wall that is not load-bearing or structural, if you do so to create an extra bedroom or create an office, and either or both of those are in violation of the documents or local ordinances, then it cannot be done.

In other words, the action is not to be construed so narrowly as to ignore that the actions may affect other provisions that are prohibited.