

KNOW YOUR RIGHTS:
AN OVERVIEW OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

For those in New Jersey who own condominiums, knowing your rights in the midst of a forest of state laws, bylaws, master deeds, and other property-specific rules and regulations, can be difficult. There may be times where the condominium association, as a punishment for some infraction, may interfere with your use or access to portions of the condominium property. This guide is designed to help inform condominium unit owners as to their rights with respect to what the N.J. Condominium Act (N.J.S.A. § 46:8B-1 *et seq.*) terms “common elements” and “limited common elements.”

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS GENERALLY

Common elements and limited common elements generally make up all of the accessible property of the condominium complex that does not constitute your actual unit. For example, the N.J. Condominium Act includes under its lengthy definition of “common elements” certain internal structures such as “[non-reserved] basements, halls, corridors, lobbies, stairways, [and] elevators,” as well as “[non-reserved] yards, gardens, walkways, parking areas and driveways.”¹ Common elements are for the use and enjoyment of all unit owners, and each unit owner owns a “proportionate undivided interest” in all common elements that is inseparable from their ownership in the unit.² In fact, the definition of “unit” under the N.J. Condominium Act specifically includes the undivided interest in the common and limited common elements.³ In sum, common elements are owned in common among all unit owners, are for communal use and enjoyment, and under New Jersey state law are inseparable from ownership of the unit itself.

“Limited common elements” are defined in the N.J. Condominium Act as “those common elements which are for the use of one or more specified units to the exclusion of other units.”⁴ Limited common elements, then, are still owned in-common the same way that common elements are, but are available for the use and enjoyment only of certain unit owners. Limited common elements, in short, are common in their ownership, but limited in their use. Examples of a typical limited common element would be assigned driveways or parking spaces.

¹ N.J.S.A. § 46:8B-3(d).

² N.J.S.A. § 46:8B-6.

³ N.J.S.A. § 46:8B-3(o) (“Unit” means a part of the condominium property designed or intended for any type of independent use, having a direct exit to a public street or way or to a common element or common elements leading to a public street or way or to an easement or right of way leading to a public street or way, *and includes the proportionate undivided interest in the common elements and in any limited common elements assigned thereto* in the master deed or any amendment thereof.) (emphasis added).

⁴ N.J.S.A. § 46:8B-3(k).

The New Jersey Supreme Court has reinforced the significance of a unit owner's property rights in common elements in one of the few published cases to deal with this issue. In *Thanasoulis v. Winston Towers 200 Assoc.*, the Supreme Court ruled against an association that charged non-resident unit owners higher rates for parking spaces than resident unit owners.⁵ The Supreme Court found that the statutory property interests of the unit-owners in the common elements outweighed the managerial powers of the association.⁶ Moreover, because the property interest in the common elements is inseparable from the unit, and because the N.J. Condominium Act prohibits a "change to the unit" without the owner's consent⁷, the Court found that the higher parking fee constituted a "change to the unit" in violation of the Act.⁸ Thus, under New Jersey Supreme Court precedent, unit owners maintain significant property rights in their common and limited common elements.

What specifically constitutes the limited common elements, common elements, and unit will vary from condominium complex to condominium complex, as each master deed will also contain its own definitions of "common elements" and "limited common elements" which may differ somewhat from the N.J. Condominium Act. The master deed may also contain a more varied breakdown of common elements not found in the Act, utilizing terms such as "general common elements" or "reserved common elements." To determine what constitutes a common element, a limited common element, or part of your actual unit, it is important to look closely at the definitions and descriptions of these in your master deed.

THE ASSOCIATION'S POWERS WITH REGARDS TO USE OF THE COMMON AND LIMITED COMMON ELEMENTS

The right of unit owners to use and enjoy common and limited common elements, however, is not absolute. The N.J. Condominium Act provides condominium associations with the power to enact bylaws which can provide for the "adoption, amendment and enforcement of reasonable administrative rules and regulations, including the imposition of fines and late fees which may be enforced as a lien [...] relating to the operation, use, maintenance and enjoyment of the units and of the common elements including limited common elements."⁹ The Act also allows the master deed to contain limitations on use of common elements, provided such restrictions are "not inconsistent with the 'Condominium Act[.]'"¹⁰

⁵ See *Thanasoulis v. Winston Towers 200 Asso.*, 110 N.J. 650, 652 (1988).

⁶ *Id.*

⁷ N.J.S.A. § 46:8B-11.

⁸ *Thanasoulis*, 110 N.J. at 663 ("we assume that the legislative intent was that a unit owner should retain essentially the same property rights originally deeded to him for as long as he owns his unit, unless he affirmatively consents to their being altered. [...] The revised parking rules have the effect of confiscating a portion of the property interest he acquired when he purchased his unit, thereby denying plaintiff the economic value of a portion of his unit.").

⁹ N.J.S.A. § 46:8B-13(d).

¹⁰ N.J.S.A. § 46:8B-9(m).

Thus, condominium associations are given the power to include limitations on use of all common elements. However, such restrictions must be enumerated either in the master deed, the bylaws, or in other rules of regulations. While associations are also given the power to enforce these rules, restrictions and their enforcement must be “reasonable,” and must not contravene or exceed their power under the N.J. Condominium Act.

The exact limits of the punitive powers of the associations are not clearly defined, but the N.J. Condominium Act has generally limited its descriptions of such powers to the impositions of fines which may be enforced as liens.¹¹ The extensive reference to the association’s ability to enforce its rules through fines and liens throughout the Act, seems to imply that such methods (along with legal remedies like lawsuits or injunctions) are the exclusive means by which associations can punish infractions, including the failure to pay an assessment or a violation of the rules.

No published New Jersey decision has ruled definitively on an association’s power to revoke use of common elements or limited common elements. At least one New Jersey case implied in dicta, without ruling on the exact issue, that an association has the power to completely revoke use of common elements in response to falling behind on payment of assessments, provided that such power is enumerated in the master deed.¹² Another New Jersey decision, however, ruled that punitive powers not enumerated in the N.J. Condominium Act are not permissible, given that the N.J. Condominium Act explicitly provides means for an association to punish late payments and other infractions.¹³

Given that N.J.S.A. § 46:8B-16(b) appears to expressly limit an association’s punitive powers to “reasonable fines and assessments upon unit owners maintainable by the association, or for an action for the recovery of damages, for injunctive relief, or for a

¹¹ See N.J.S.A. § 46:8B-14(c) (allowing for “enforcement of rules governing [...] the use of the common elements, including but not limited to the imposition of reasonable fines, assessments and late fees upon unit owners”); N.J.S.A. § 46:8B-15(f) (“the association may impose reasonable fines upon unit owners for failure to comply with provisions of the master deed, bylaws or rules and regulations.”); N.J.S.A. § 46:8B-16(b) (specifically limiting association’s remedies for infractions to “reasonable fines and assessments upon unit owners maintainable by the association, or for an action for the recovery of damages, for injunctive relief, or for a combination thereof”); see also N.J.S.A. § 46:8B-21 (detailed description of the lien’s by the association against unit owners that fails to include the ability to revoke use of the property).

¹² See *Glen v. June*, 344 N.J. Super. 371 (App. Div. 2001) (where punitive obstruction of use of a driveway was not permitted because the applicable master deed only allowed for the revocation of use of common elements, and not limited common elements).

¹³ See *Walker v. Briarwood Condo Ass’n*, 274 N.J. Super. 422 (App. Div. 1994) (where fines imposed by the association were found to have exceeded their enforcement powers under the N.J. Condominium Act because imposition of fines was not enumerated, while other express means were) (Note: the N.J. Condominium Act was amended shortly after this case to allow for the imposition of fines by associations).

combination thereof,” New Jersey case law and statutory construction seems to suggest that the revocation of use of common elements or limited common elements exceeds the powers granted to it under the Act. Associations are permitted only to make “reasonable” restrictions on use of units, common elements, and limited common elements to further “the health, safety and general welfare of the residents of the community.”¹⁴ Nothing in the N.J. Condominium Act itself explicitly permits the revocation of use of entitled common and limited common property as a means to penalize owners who do not follow the rules regarding such property or fail to pay their monthly assessment. (This does not include association property that one is not entitled to use pursuant to your ownership in the condominium, and requires an additional, but optional, payment of a fee.)

CONCLUSION

All unit owners own undivided proportionate interests in all of the common elements and limited common elements. The use of common elements are guaranteed to all unit owners, while use of limited common elements is reserved for specific residents. The association may enact rules or bylaws making “reasonable” restrictions on the use of the unit and all common elements to ensure the general welfare of the community.

Whether or not an association’s rule allowing for the revocation of use for limited common elements or common elements as a punitive measure is permissible, however, is as of yet uncharted territory. However, it appears that the revocation of use of common elements or limited common elements as a punitive measure is inconsistent with the N.J. Condominium Act. When your master deed is silent on this issue but reinforces the Act’s explicit authority to charge fines or assert a lien as a punitive measure, a strong argument can be made that the Association cannot take away your right to use such common or limited common property. The harder question is when your master deed explicitly permits the Association to take away such use. The New Jersey courts have yet to decide that issue (in a published decision) under such circumstances.

¹⁴ N.J.S.A. § 46:8B-9(m); N.J.S.A. § 46:8B-14(j).