



#260 HOA Homefront – Exclusive Use Common Areas – What You Might Not Know

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Many condominium buyers do not understand what they bought until long after becoming an owner. Condominiums consist of two elements: A “separate interest”, called the “unit”, and an undivided equal share in everything else, called common area. However, there are usually also hybrid areas, called “exclusive use common area,” devoted to the exclusive use or benefit of a single condominium yet are still common area.

Here are seven oft-unknown aspects about this aspect of California condominiums:

1. **Exclusive use common areas are not defined by written or oral statements or even contracts.** Regardless of what a neighbor, a Realtor® or even a purchase contract may say, exclusive use common areas are defined by written and recorded documents. Exclusive use common area is defined normally in condominium plans, CC&Rs and Civil Code 4145.
2. **Exclusive use is not only balconies and patios.** Private patios and balconies are normally characterized as exclusive use common area, but exclusive use areas usually include far more than that. Per Civil Code 4145, unless the governing documents say otherwise, exclusive use common areas include “shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest but located outside the boundaries of the separate interest”. Common examples of exclusive use equipment would be air conditioning or water heater equipment serving single units.
3. **It’s not your property.** Exclusive use area is for the use by occupants of a single residence, but it is still common area, meaning it is owned by the entire association. The user does not own it any more than any other of the association members.
4. **The HOA can tell me what to do with my area.** Unfortunately, many condominium owners mistakenly believe that, since only they use the balcony, that the association cannot control how they use it. Exclusive use common area is still common area and falls under the control of the association. Carefully check the association rules and use restrictions before closing escrow- one may want to know what one can and cannot do with the balcony or patio area.



5. **Exclusive use is still the HOA responsibility for repairs, and this has not changed.** Civil Code 4775 was amended this year, to confirm that, unless the CC&Rs say otherwise, the association repairs exclusive use areas and the homeowner maintains them. The technical change in the law did nothing but confirm the long-time mainstream legal interpretation, so associations continue to be responsible for repairing exclusive use areas unless the CC&Rs state otherwise.
6. **The Board cannot allocate maintenance and repair responsibility for exclusive use.** Pursuant to Civil 4775, only the CC&Rs can reallocate repair and maintenance responsibilities. So, a board might pass a new rule saying that, for example, homeowners must repair their own balconies – but in the current law that change would be ineffective. Repair and maintenance responsibilities other than stated in Civil 4775 may only be allocated under the CC&Rs, which are amended by vote of the membership and not the board.
7. **With some narrow exceptions, boards cannot give away exclusive use area.** Civil Code 4600 does not allow common area to be redesignated as exclusive use area unless over 67% of all members vote to approve that change.