

Condominium Plan:

Understanding This Often Overlooked Governing Document

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There are many documents used or referred to in the management of a condominium project. The least understood and consulted is undoubtedly the condominium plan, even though it is referenced in every single deed to a condominium. Virtually every board member, association manager and attorney has read or analyzed the association's Declaration of Covenants, Conditions and Restrictions, Bylaws and Articles of Incorporation a number of times. These documents are frequently consulted for answers to a multitude of questions regarding the rights and responsibilities of the association and its members. The condominium plan, however, is frequently overlooked. Although the contents and purpose of a condominium plan are limited, it has an important role to play in condominium management.

The term "condominium plan" is defined in Civil Code section 4120 and described in section 4285. It has three elements. First, it contains a description or "map" of the condominium project in reference to ground monuments. This means the location of the project is identified with respect to reference points on the ground, such as streets. The dimensions of the project will also be shown.

Second, the plan contains a three-dimensional description of the project in sufficient detail to identify the common areas and each unit. This means the plan will contain a description of the location, size and boundaries of each unit, the exclusive use common areas, and the common area. For example, the boundaries of each unit might be described as the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors. The location and dimensions of patios, balconies, parking spaces, and storage spaces may also be described in the plan.

Third, the condominium plan contains the consent of the record owner of the property and any lender to recordation of the plan. The original plan only requires the consent of the developer, who at the time the plan is prepared owns all of the property. However, once the project is built and sold, 100% of the members who collectively own the common area and 100% of all lenders on any unit must consent to any modification of the plan.

In terms of its use as a management tool, the condominium plan has two primary functions. The first primary function is the description of units versus common area. This is extremely important in the identification of maintenance responsibilities, which are often assigned according to whether a particular feature is common area, or part of a unit. The plan usually describes the boundaries of the unit (air space), and then lists those physical features which are either exclusive use common area or common area, and not part of the unit. Frequently, such items as bearing walls, pipes, wiring, and other utility installations (except the outlets within the unit) are identified as part of the common area. Garages, parking spaces, balconies, patios and other similar features are often identified on the condominium plan as either part of the unit or exclusive use common areas.

The second primary function of a condominium plan is the identification of exclusive use common areas. Often, parking or storage spaces, not physically connected to a unit, are identified in the plan on a plat map by location and identifying numbers. Then, when their identifying numbers are located on a deed, the plat map can be consulted to determine their exact location. Other condominium plans utilize a list format where each unit is matched up with its respective exclusive use common area, such as a patio, balcony, parking space, or storage space. The list can be consulted to identify the numbers of the exclusive use common areas belonging to any given unit, and then the plat map can be used to find their location. Though a variety of condominium plan formats can be used, the results are usually the same: fixing and identifying the location of units and their assigned exclusive use common areas.

One problem we have encountered is the “reassignment” by either boards of directors or owners themselves, of certain exclusive use common areas. For a variety of reasons, some associations have “rearranged” parking or storage space assignments, and owners are no

longer using spaces originally assigned to their units on the condominium plan. Exclusive use common areas which are assigned pursuant to a condominium plan (and appear on the deed as well) are real property interests which cannot be changed without the property owner's consent and appropriate documentation. Remember, changing the scheme set forth in the condominium plan in any way requires the written consent of 100% of the owners and 100% of the lenders on the units. If a board of directors or group of owners is contemplating action which will result in any deviation from the condominium plan, legal counsel should be consulted before taking that action.

It is likely the condominium plan will remain the least utilized of all the association's documents. Yet, when maintenance, repair, location, or boundary issues arise, it may well be the document that should be consulted first. A copy should be kept with every association's governing documents.