

The Division of Responsibility within a Condominium Corporation

Condo living provides many advantages but also requires a few sacrifices. Most of the compromises revolve around living in close proximity to your neighbours and sharing responsibility for the “common” aspects of our community. When you bought your townhouse, you also became a shareholder in a Condominium Corporation known as Y.C.C. 367 and all of its assets. The basics of Condominium responsibility are pretty simple, everything inside your home (the Unit) is yours, everything outside (Common Element) is the Corporations. The confusing part is determining where the boundaries that separate these two actually are in a practical way. The other thing to remember is that while you are 99-100% responsible for everything within your home, you are still 1/48th responsible for everything else.

There is a document referred to as the “DECLARATION” that explains all the legal details and responsibilities associated with our Condominium and while some of you may have read it, it is often filed away with all those other important documents that we will get to when we have a chance. I do not intend to duplicate the Declaration in this note, but will attempt to simplify and provide practical examples to illustrate some of the issues presented by Condo living.

The first basic division in a Condominium is between COMMON ELEMENTS and UNITS.

COMMON ELEMENTS refers to all property except the UNITS.

The boundaries of the UNIT are described in Schedule “C” of the Declaration and as part of Section IV. Basically your home is the area extending from the top of the concrete floor in the basement to the upper side of the ceiling drywall on the top floor and within the area bound by the interior face of the exterior concrete/masonry walls in the basement or the backside of the drywall in any other exterior wall. There are a few notable exclusions, but let’s temporarily ignore them.

From this simple description it is evident that things like the roof joists, roofing, shingles, siding, cladding or exterior brickwork, foundation cracks are all the Corporations responsibility to maintain.

If for any reason a repair is required within the unit such as a damaged dividing wall or door between rooms, cupboard, an interior ceiling or issues with a bathroom, this would be your responsibility.

Now for those exceptions.

Let’s start with doors and windows. While you are responsible for the interior aspect of any door leading out of your unit, the Corporation is responsible for the

exterior aspect. Responsibility for window frames is comparable. You are responsible for the inside face of the window frame and the Condo is responsible for the exterior face. Your garage door is slightly different as the Unit boundary only extends to the inside aspect of the door. So while the actual door is the responsibility of the Corporation, the mechanism and all parts inside the garage to operate the garage door are your responsibility.

This may seem simple but presents many practical problems. Most windows these days are sealed single units. It is generally not practical to separate the inside and outside parts of the frame. The same goes for a patio door (is it a door or a window? – it's both). Since this type of repair/replacement is a shared responsibility, we have setup our window and patio door replacement program as a compromise (described elsewhere). While repairs to garage doors are typically mechanical failures, the Corporation has chosen to interpret its duty to repair and maintain to include reasonable access to your garage. When it was possible to repair our garage doors, this was performed as part of general maintenance and the costs were not charged back to the owner. For the past few years, it has not been possible to repair the original garage doors as parts are no longer available. Malfunctioning doors have to be replaced and since the door itself is a Condo responsibility, the basic cost is covered as a Common element expense. Costs relating to additional installation items, such as garage door openers, alternative access devices or supporting issues are passed on the owner as their responsibility. Details on the garage door replacement program can also be found elsewhere.

The other window/door exception concerns the glass and screen parts of any window or door. The glass and screening used in any of your doors and windows is solely your responsibility. The sliding screen door that is part of your patio door is also your responsibility, even though it is technically located outside the bounds of your unit definition.

There are exceptions associated with things which may pass through your unit but actually serve others in your building block including any pipe, wire, cable, conduit duct, flue or any other service. In a practical sense this is not a huge issue for this Corporation, as most units receive individual feeds for most of these services. Common distribution services such as water, gas, sewage, electrical, phone and cable utilities are typically located in the common element either below your unit or outside of its defined bounds. Of course there are always exceptions. One unit in each of our five blocks of buildings houses a water main which meters the water being delivered to all of the other units in the block. This water meter and its pipes are not part of that unit. On the other hand, the air conditioner is your responsibility, even though part of the system is located outside of your unit.

OK – while not an exhaustive description of what is defined as the UNIT, this is a good beginning. Let's return to the COMMON ELEMENT. Remember that

everything that is not the unit is the Common element. You are responsible for your unit. The Condominium Corporation is responsible for the Common element. Seems simple, but there are exceptions here too.

The Common Element is not all equal, nor would we really want it to be. The common element in close proximity to your unit is referred to as “**exclusive use**” common area. This includes your front walkway and driveway area as well as your backyard patio area. For those units with balconies, these areas are also exclusive use. The 10 “end” units are considered the same as all other 38 units. The area beside these units is considered general common area and is not an exclusive use area of the adjacent unit. While our Declaration defines these things in legal terms, this is basically a common sense concept. We are each entitled to some privacy or exclusivity outside as well as inside our units.

The complication arises from the division of responsibility within the exclusive use area. The general Common Element is the sole responsibility of the Condominium Corporation. The Corporation arranges for the roadways to be cleared of snow in the winter and for the overall grounds to be maintained throughout the year. This includes things like landscaping, maintaining the fire hydrants, street lighting, swimming pool, roadways, sidewalks, sewers, pest control and many other general maintenance issues. Repairs and maintenance to the exterior aspects of your unit which are also part of the common element, are also the responsibility of the Corporation. To understand the sharing of responsibility within the exclusive use area, it is necessary to return to the original features of the unit and exclusive use area.

The front area of a typical unit includes a driveway, walkway, front porch, garage and a lawn or garden. Don't forget the front door. The exterior aspect of the front door is common element. Originally, the driveway was asphalt, the walkway was composed of about 8 (24x30”) patio stones, the front porch area was open and the lawn/garden area had a few basic shrubs, grass and in some instances a tree. Over the years, the Corporation has allowed owners to personalize their outdoor living areas by making improvements to things as lighting, screen doors, front doors, porch enclosures, widening or enhancing the walkway and landscaping of their exclusive use area.

Similarly, the rear area of a typical unit included a back patio composed of about 16 patio stones, step-up stone (if required), dividing fencing and shrubs separating units and a grass backyard. The sparse initial state of the rear exclusive use area has also been allowed to be altered so that an individual owner could enjoy the use of their home. Patio and landscaping improvements have been encouraged and probably account for the majority of alterations to these backyard exclusive use areas.

It is the Corporation's responsibility to maintain the exclusive use area only up to the level of the original specification. It is the owner's responsibility to maintain a

level that exceeds these basic requirements. This is a fair split of responsibility. The problem is in the practical details. In an extreme example, it would not be fair for an owner to make a substantial investment in an elaborately landscaped extension to their backyard patio and then expect the Corporation to maintain the area at that level on an annual basis. Common element fees are paid by all and there is an expectation that they will be used to maintain everyone's property in an equitable manner. Just because an owner chooses to improve their exclusive use area does not mean that everyone else has to pay to maintain this area at that level. Now the problem can be avoided by not allowing any improvements, but that is an overly restrictive solution and diminishes the enjoyment that we can derive from our homes. The problem can also be solved by accepting all changes as a Condo responsibility, but then common element fees would have to rise to accommodate a higher level of maintenance. We all share 1/48th of the costs. It is not a simple matter to re-adjust the proportion of common element responsibility based upon a higher cost of maintenance as a consequence of an approved improvement. So the compromise solution is to allow owners to improve their exclusive use area with the understanding that they are responsible for any additional maintenance costs associated with that improvement.

It should be noted that ANY alteration or improvement to the common element, including exclusive use areas, must be submitted to the Board for approval. If approval is granted, a signed agreement describing the proposed change to the common element and the responsibilities of both the owner and the Corporation must be on file prior to the start of any work related to the common element change. If you read the Declaration, a similar stipulation exists for work performed within the unit as well. The difference is that unless there is a specific prohibition or peril associated with an alteration to the unit, the Board is obligated to approve the request. The owner is obligated to inform the Corporation of any change, either within the unit or to the common element.

OK, lets' look at some practical examples and see who is responsible for what.

Problem	Responsibility	
	Condominium	Owner
Broken divider fence	100%	none
Broken rear light fixture	If original, standard fixture – 100%	If upgraded, owner responsibility but arrangements can be made with the Management company
Burnt out light bulb	None	100%
Ripped screen	None	100%
Damaged eaves	100%	none
Relevel rear patio	Responsible for the maintenance or equivalent cost to re-level	Responsible for any additional costs associated with an

	the original 16 patio stones	extended or enhanced patio
Relevel front walkway	Responsible for the maintenance or equivalent cost to re-level the original 8 patio stones	Responsible for any additional costs associated with an extended or enhanced walkway
Damaged downspout	100%	none
Storm door (front door)	None	100%
Front porch enclosure	None	100%
Driveway sinking or cracked	100%	none
Driveway sealing	None	100%

Historically there have been very few problems with the division of responsibility, particularly when the owner who requested the alteration(s) still resides in the unit. Problems or confusion tend to occur once the property has changed hands a few times. The current owner may be unaware as to what constituted the original unit and what features were added by prior owners. These issues can generally be easily clarified by contacting our Property Manager or submitting a request for clarification to the Board. It should never be assumed that just because "it" was there when a unit was purchased this is a Condo responsibility.

As you can see there are many situations where the distinction between "unit" and "common element" is far from black and white. But just because the answer may be complicated is not a reason to ignore the fact that this is a Condominium Corporation to which you have both privileges and responsibilities. An open dialogue between owners and the Corporation, as represented by the Board of Directors and Property Management, is fundamental for us all to enjoy our individual homes and the extended property that comprises Y.C.C. 367.