



The Davis-Stirling Act Clarifies Responsibility for Maintenance and Repair of Exclusive Use Common Area

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Since the inception of the Davis-Stirling Act in 1985, there has been confusion regarding owner vs. association responsibility for the repair or replacement of exclusive use common area. Many associations have governing documents that were drafted prior to 2017, when the Civil Code wasn't so clear. For those associations, the Davis-Stirling Act, specifically Civil Code 4775 clears up some of the ambiguities.

Civil Code Section 4775 states that unless otherwise provided in the CC&Rs, a community association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area. The homeowner of each separate interest is responsible for maintaining their separate interest (their unit or home) and any exclusive use appurtenant (attached or next to) their separate interest.

So, while Civil Code Section 4775 has addressed who is responsible for the maintenance, repair, and replacement of the common area, this code section only dealt with the responsibility for maintenance of the exclusive use common area, or so that is how many interpreted the code section.

What many Board members and homeowners failed to realize is that exclusive use common area is really nothing more than common area which an owner has the exclusive right to use. So it should have been clear that because it is common area, it is still the Association's obligation to repair and/or replace the area components. Typically, exclusive use common area is defined in an association's governing documents as patios, balconies and/or parking spaces.

Although some associations' governing documents do have a more expansive definition of exclusive use common area that includes certain other elements of the common area that service only that unit (such as a utility closet adjacent to a unit), most do not. Each association has to refer to its own CC&Rs and, as applicable, the condominium plan, to determine what is or is not exclusive use

common area. Boards should consider discussing this issue with legal counsel and prepare a maintenance matrix that identifies and resolves the questions over specific areas, especially if contested.

Here is the text of Civil Code Section 4775:

4775. (a) (1) Except as provided in paragraph (3), unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, and maintaining the common area.

(2) Unless otherwise provided in the declaration of a common interest development, the owner of each separate interest is responsible for repairing, replacing, and maintaining that separate interest.

(3) Unless otherwise provided in the declaration of a common interest development, the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to that separate interest and the association is responsible for repairing and replacing the exclusive use common area.

(b) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

(c) This section shall become operative on January 1, 2017.

Associations may refer to this statute to help eliminate a lot of owner to owner or owner to association disputes. Many associations have misinterpreted Civil Code Section 4775 when the CC&Rs are silent on this issue and incorrectly assigned responsibility for repair and replacement of exclusive use common area to the individual owner. This code section clearly indicates that that is not the correct approach.

To help explain the legislature's reasoning for this law, the following comes from the Legislative Council's Digest:

"AB 968, Gordon. Common interest developments: common areas: maintenance and repairs.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. These provisions require that a common interest development be managed by an association and also set forth the duties and responsibilities of the association and the owners of the separate interests with regard to maintenance and repair of common and exclusive use areas, as defined. Unless otherwise provided in the common interest development declaration, the association is responsible for maintaining, repairing, or replacing the common area, other than the exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the interest.

This bill would, beginning January 1, 2017, instead provide that, unless otherwise provided in the declaration, the association is responsible for maintaining, repairing, and replacing the common area, the owner of each separate interest is responsible for maintaining, repairing, and replacing the separate interest, and the owner of the separate interest is responsible for maintaining the exclusive use common area appurtenant to the separate interest while the association is responsible for repairing and replacing the exclusive use common area.”

While this legislation clears up ambiguities in governing documents, there are many managers, board members and even attorneys who have come up with their own interpretations as to who is responsible for exclusive use common area and have assigned same to the homeowners. But as I said above, their interpretation of the Civil Code and/or what is or is not exclusive use common area is flawed. The clarification of maintenance and repair responsibilities made by Civil Code Section 4775 is consistent with the position currently taken by most (but surprisingly not all) attorneys who practice in this area.

If your community association has issues with who is responsible for exclusive use common area or what is exclusive use common area based on your CC&Rs, we suggest that you contact legal counsel.

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