



## Condominium Parking Space

How they are created, owned, transferred, and insured

### The Declaration

A condominium is described as “the concept of ownership of a single unit of air space within a multiple dwelling complex, together with joint ownership of the amenities (pool, recreation center, greenbelts, etc.) and common areas of the structures and land among all unit owners.”

The condominium is governed by the Declaration of Covenants, Conditions, and Restrictions or Condominium Declaration. The Declaration is paramount in importance partly because of its contents, which may include provisions for assessments, rights to use of the common area or common elements both general and limited, development rights, special declarant rights, maintenance, easements, insurance, and other matters that bind the land and set forth rights and obligations of the owners and users of units or other property within the community.

### General and Limited Common Elements

The Declaration further sets forth the difference between a General Common Element and a Limited Common Element. A General Common Element is all portions of a condominium other than the units. A Limited Common Element is a portion of the common

elements allocated by the declaration for the exclusive use of one or more units but fewer than all of the units. The Declaration specifies to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

### Parking and Garage Spaces

Most parking spaces and garage spaces within a condominium regime are treated as limited common elements where unit owners are given or conveyed “the exclusive right to use.” However, some are now being treated as separate units from the living air space units and unit owners are given “fee simple” title to the parking and garage units. This means the title holder has absolute and complete ownership, including the right to sell, convey, or encumber the parking or garage space separate from the living unit itself. In some cases, parking and garage spaces are treated as common elements assigned by the declarant for use by a particular unit owner where no deed transfers are necessary.

### Exclusive Rights

If a unit owner is given “the exclusive right to use” a parking space or garage space, the declaration will govern whether the unit owner can sell that right, lease that right, or if that right is

inseparable from the unit. If the exclusive right to use is inseparable from the living space unit, the declaration may contain language that provides that “no part of the appurtenant interests of any unit may be sold, transferred or otherwise disposed of except as part of a sale, transfer or other disposition of the unit to which such interests are appurtenant.” Moreover, the right to use a parking space or garage space is not a personal right of any particular individual, but is appurtenant to the unit and such right does not exist separate from the ownership of the unit.

### Fee Simple

If the unit owner is given “fee simple” title to the parking space or garage space, the declaration will still govern the rights that the unit owner has in regard to the parking space or garage space. These rights could include parameters of selling, exchanging, or leasing to another unit owner only or to anyone not part of the complex. With this type of ownership, the parking or garage space may be taxed by the County Treasurer as a separate unit for real property tax purposes.

### Legal Description of Limited Common Elements

To insure limited common elements, there must be a legally sufficient description of the real estate within the declaration and a depiction on a condominium map. The approximate location and dimensions of the limited common elements must be set forth on the map. If the parking space or garage is to be treated as a separate unit, then the dimensions must show both the vertical and horizontal boundaries of the unit.

When the title company is asked to

insure a parking space or garage space, they look at all aspects, from checking the declaration to seeing how these limited common elements are treated, to searching and setting forth what should appear on the conveyance deed.

The legal description that appears on the title commitment will take into account the analysis done and will (1) omit the parking or garage space where no insurance will be provided because it is simply assigned by the declarant, or (2) will have language at the end of the unit description such as “the exclusive right to use the following limited common elements: parking space or garage space,” or (3) will have the legal divided into two parcels with the first parcel being the living air space unit and the second parcel being the parking space unit or garage space unit.

### Insuring Limited Common Elements

Limited common elements such as parking and garage spaces can be troublesome for a title company to insure. A chain of title must exist that clearly and accurately conveys the parking or garage space. The parking or garage space must be accurately described with a sufficient legal description and be physically locatable. (Remember, the declaration rules how limited common elements are allocated and become appurtenant to units.) If the parking or garage space has not been properly conveyed or is not locatable, the title company may not be able to insure it.

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