

titleTALK



Dear valued Realtors® and valued customers,

When it comes to ownership of condominiums, villas and town homes, the requirements differ from single family homes in a few ways. This month's newsletter offers some clarification on the most commonly asked questions and explains the rights of owners and purchasers of condominium, villas and townhomes.

Sincerely,
Laura Bowers, Managing Director



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Condominium, villa and townhome forms of ownership

Due diligence & best practices

Most people buying a condominium, villa or town home understand the basics—you're buying a unit, you have to pay monthly dues to cover the general expenses of maintaining the building, and there are common areas (“common elements”) for example hallways and elevators that all unit owners can share. You typically do not own the land, but simply the unit itself, except in the case of some villas. In addition to buying the unit and the interest in the common elements, you may also be buying what is known as a “limited common element.”

What is a limited common element?

A limited common element is a common element that is restricted for the exclusive use of one or more but less than all of the unit owners.

Some examples of limited common elements are:

- Parking spaces
- Boat docks
- Storage lockers
- Boat slips

If you're buying a condominium unit, villa or town home, and you're also getting a parking space, if that parking space isn't being transferred separately from the unit then it is probably a limited common element. This is what we call “appurtenant to the unit,” or in other words, it cannot be separated from that unit and automatically transfers when the unit is sold.

One does not *own* the parking space, boat slip, storage locker or boat dock for example, but they do have the exclusive right to *use* those limited common elements as a unit owner. There are some condominiums that do allow the transfer or exchange of limited common elements and in those cases; you should always find out what you are getting or not getting by confirming this with the condominium association.

A limited common element is one of the reasons why it's important to read the condominium documents carefully so that you know what you're buying. You need to understand not only what the limited common elements are, but also who pays for their maintenance and upkeep and whether there are any restrictions on their use.

Condominium
Declarations
and Restrictive
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The limited common elements associated with your unit should be described in the condominium declaration, so that is the first place you should look. You should also review the condominium plat. The plat shows the location and dimensions of the units and the common elements along with the location of parking spaces and/or storage lockers in some cases. Condominium Declarations and Restrictive Covenants are important to review. They will for example identify who is responsible for things outside of the unit such as shutters, doors, windows, porches, a/c units, and patios. *Additionally, many condominiums, villas and town homes restrict the use of the unit and there are often pet restrictions to be taken into consideration.*

Here's an example of a seller whom we handled a closing for recently. This was an attached "town home". There were two residences per building. After the termite inspection was performed, it was discovered that the subject unit had a live infestation of termites. Being that this was an *attached* town home, the entire building had to be tented. Pursuant to the association documents, the adjoining unit owner was responsible for ½ of the tenting, which was a surprise to that unit owner. But you can clearly see, there was no other way to treat just ½ of the building by tenting it.

What is the agent's role in listing one of these types of properties?

As the listing agent it is absolutely your responsibility to confirm what limited common elements should accompany the unit so it can be listed in the MLS with specificity. You can confirm this with the Board of Directors of the Association. We have seen numerous times when this was not made clear in the listing and created much confusion and in some instances lawsuits. You should be diligent about properly including all limited common elements and their descriptions in the listing agreement and the contract to avoid potential problems in the future.

In summary, a limited common element is often not insurable under Title Insurance. In limited cases they are insurable, but each property needs to be evaluated to determine this.

What is the easiest way to obtain the condominium declaration or subdivision restrictions?

Your MSC Title team is here to provide electronic copies of any condominium declarations or subdivision restrictions as a courtesy. Our team can often have them to you within two hours. Please send your requests to Lisa Mucciarone at lisamucciarone@msctitle.com.

Contact Laura Bowers at laurabowers@msctitle.com or 941.552.5211 if you have any further questions about these types of ownership.

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