



Amended Civil Code Section 4775 Clarifies Responsibility for Exclusive Use Common Area Has Your Association Adjusted to The Changes?

By David C. Swedelson, Community Association Attorney at SwedelsonGottlieb

Many California community association's CC&Rs, particularly those in older communities, do not clearly state who is responsible for the repair or replacement of exclusive use common area. This typically relates to the waterproofing of patios and balconies at most condo associations. That is the exclusive use area defined in the CC&Rs that requires repair and/or replacement (for most condominium associations, exclusive use common area is limited to balconies, patios and parking spaces). Before January 1st of 2017, there was some uncertainty as to who is responsible for the repair or replacement of exclusive use common area which led to disputes between associations and owners.

Fortunately, amended Civil Code Section 4775 helps clarify this issue. If the CC&Rs are not clear, we look to Civil Code Section 4775. That section, like former Civil Code section 1364, its predecessor, had since the mid 1980s provided that the association is responsible for repairing, replacing, or maintaining the common area, other than 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 separate interest.

The problem with the above language is that it is vague. For years, this language, specifically, the statement in this code section -- other than exclusive use common area— led to confusion as to who was responsible for exclusive use common area. This language left much to legal interpretation as to what exactly the owner was responsible for and where does maintenance begin and repair or replacement end. Many condominium associations took this language to mean that they could assign maintenance and repair of the balcony waterproofing to the owners. While a little late, the California legislature helped clear up any confusion with amended Civil Code § 4775 adding section (a) (3), which took effect January 1, 2017. The clarified language provides that unless otherwise provided in an associations CC&Rs:

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- The owner of each separate interest (unit or lot) is responsible for maintaining the exclusive use common area appurtenant to that separate interest.
- The association is responsible for repairing and replacing the exclusive use common area.

This revised language clarifies who is responsible for maintenance and repair/replacement of exclusive use common area. But this amendment did not really change the law. Many attorneys (including those at SwedelsonGottlieb) have always interpreted Civil Code § 4775 (and its predecessor Civil Code § 1364) as only obligating an owner to maintain their exclusive use common areas because that area remained common area. The amendment merely sets out what many California community association attorneys have always interpreted the law to state. Amended Civil Code § 4775 defers to the CC&Rs and controls maintenance and repair responsibility only if the CC&Rs do not otherwise provide.

So, what does this all mean? It means that California condominium associations (this does apply to planned developments, but not nearly to the same extent as planned developments typically do not have any exclusive use common area) need to review their CC&Rs (if they have not done this already) to determine whether the CC&Rs define exclusive use common area maintenance, repair and replacement responsibility. If the CC&Rs are not specific, the language of the Civil Code will control, making associations responsible to repair (and fund) exclusive use common area repairs.

Amended Civil Code § 4775 does provide associations the ability to define exclusive use maintenance responsibility. While the new language in this code section makes it clear that that the association has the responsibility to repair an owner's exclusive use common area (because the owner really has the exclusive use of that airspace and the floor surface remains common area), the association may have the ability to define maintenance responsibility.

The net result of clarified Civil Code § 4775 is that California Community Associations will have to accept repair or replacement responsibility for exclusive use common area components that in the past were (incorrectly) assumed to be the owner's responsibility. Associations will need to review their reserve and operating budgets to make sure the added repair expense is budgeting for and included in the annual assessment calculation.