

**Condo Smarts**

Headline: How is common property allocated?

Topic: Common Property

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**Dear Condo Smarts:** We bought into a ten unit condo building in May of this year. There are ten parking spaces, and we assumed that each unit was granted the use of one parking space. Now we have found out that the top floor unit has three parking spaces, and two units have to park on the street. We have good street parking, but it is not underground, and is not secure for our cars. The owner of the top floor unit has lived there for 22 years and has threatened to sue us if we take away any of her parking spaces. She claims that because she was the first purchaser, she negotiated the three parking spaces in her sale, and therefore owns the spaces. She also claims that if she decides to sell, those three spaces go along with her unit. The remaining nine owners have met to discuss this problem and have decided not to create a costly dispute, but there must be some way of resolving and giving fair access to all owners. MJ, Nanaimo

**Dear MJ:** Exclusive allocations of parking, storage lockers, and deck and patio spaces can be found in strata corporations throughout the province. Many of them are legitimate and enforceable agreements, and many of them are often just "claimed" space by a dominant owner or the resident bully of the strata. Before you can take any action, you need to know the facts. The first step council has to take is to review a copy of the registered strata plan, and any limited common property amendments that may have been made over the years. If the property has been properly designated as limited common property by the owner developer, then it could only be changed by a unanimous vote of the strata corporation. If it was designated as limited common property by a vote of the strata corporation, then the strata could amend it by 3/4 vote. Either way, if the area

was properly registered as limited common property, that person has the right of exclusive use of the property. If the area is common property, the use may be regulated through the bylaws and rules of your strata, so you would then need to review all of your bylaws and rules that are in force and effect. If there is an agreement for the use of the parking in the purchase agreement as claimed by the owner, then a copy of the agreement should be provided to the strata council, so they can determine the validity of the agreement. At this time it would be prudent for the council to seek a legal opinion on the enforceability of the agreement, the bylaws, rules, and your options. Ideally, it is everyone's best interest to avoid arbitration or the courts, but in the end, if there is no documentation, or willing cooperation of the parties, or a legal opinion to support the claim, the strata corporation or the affected owners have no choice but to commence an arbitration or proceed to the courts to obtain a decision. If the person claiming to have the right of use of these parking spaces is on council, then it also has to be noted that with respects to an allegation bylaw violation, or a transaction or interest with the strata corporation, that person cannot be a party to the decision of strata council and must remove themselves from the meeting when a decision is made regarding the claim of exclusive use agreement, or bylaw violation. These types of disputes are also a common symptom of strata corporations that are well established. While there may have been long-term user agreements, they are often lost in the exchange of documents between strata councils and managers over the years, as strata corporations have a serious challenge maintaining corporate history.

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