

Court Rules That Condominium Declaration Governs

In [a recent case](#), a couple of parking unit owners challenged the common expense allocation for their parking units that was set out in the condominium declaration.

The condominium contained 150 residential units and 60 parking units. In addition, there were 150 parking spaces (not units), one allocated to each residential unit. The applicants in this case each owned a residential unit (together with a parking space) plus one additional parking unit.

The applicants claimed that until a recent change in the condominium management, they were not charged a separate common expense allocation for the parking units. (This was not disputed by the condominium corporation.) The applicants took the position that the corporation did not have any right to separately assess common expenses against the parking units as the parking units did not benefit from use of the common elements, such as elevators, party room, groundskeeping, etc. and that the owners were already contributing to the corporation's common expenses as owners of the residential units. These owners claimed that the fact that there were no separate additional common expense charges for the parking units in the past, substantiated their position that the corporation did not have any right to assess these charges. In addition, as the parking units could not be sold separately from the residential units, this was also relied on to support their position. The calculation of the amount of the monthly charge itself (\$50 per month per parking unit) was not challenged by the applicants.

The condominium declaration allocated a total of 97% of the common expenses to the residential units and 3% to the 60 parking units (.05 % per unit). The Judge concluded that there was no ambiguity in the wording of the declaration and that if there was no allocation of common expenses to the parking units, there would be a 3% shortfall in the common expense contributions, for which there was absolutely no justification.

“As it turns out, the Declaration itself is the governing document and prior practice – -if demonstrated – -would not be sufficient to alter the legal rights prescribed by it prospectively.”

This case confirms that if the wording in the condominium declaration is clear, the condominium corporation has no choice but to allocate common expenses in the proportions as set out in the declaration. The allocation of the common expenses among the units is determined by the declarant/developer and is set out in the draft declaration which is provided to the developer's purchasers as part of the disclosure package. The allocation in the declaration cannot be changed unless the owners of at least 90% of the units consent in writing to amend declaration.

The amount at stake in this case for each of the two applicants was not substantial (\$600 per year), but had they been successful in the lawsuit, the result would have affected the owners of the other parking units, as well as all of the owners of the residential units.