

BENEDICT COMMONS CONDOMINIUM ASSOCIATION

Frequently Asked Questions for Unit Owners

Living in Benedict Commons Condominium Association (“Association”) can and should be a great experience. After all, it’s your home. Unfortunately, this experience can be blemished by not having a basic understanding of the contents of key governing documents under which the Association is required to operate.

The purpose of this Frequently Asked Questions (“FAQ”) is to direct your attention to key provisions of the Bylaws and Declaration of Covenants, Conditions & Restrictions of the Association that are commonly overlooked, misunderstood or simply forgotten. By having a working knowledge of these provisions, you will do your part to make the Association a great place to live and to maintain and enhance property values.

The Bylaws that are referenced in this FAQ were adopted by the Association on March 13, 1996. The Condominium Declaration for the Benedict Commons Condominiums (“Declaration”) was recorded with the Clerk and Recorder of Pitkin County on March 6, 1996 at Reception Number: 390506. Since the Bylaws and Declaration may have been amended since the date this FAQ was drafted, please ask the Board of Directors of the Association whether either of these documents have been amended and review the amendments to determine whether the provisions referenced in the FAQ have changed.

You should also be aware that the Board of Directors has the ability to create reasonable rules and regulations for the Association that are not inconsistent with the Declaration. It is highly recommended that you obtain and review a copy of any rules and regulations in order to comply with them.

Obligation to Pay Assessments

Q: Am I required to pay assessments to the Association?

A: Yes. The Declaration at Section 6.2 requires every owner of a unit in the Association to pay assessments. The assessment provisions in Article VI of the Declaration also outline the purpose of the assessments and the steps the Association may take to collect delinquent assessments.

Assessments, also commonly referred to as *dues*, are essential to the operation of the Association. If owners are not diligent about paying their assessments in a timely manner, the Board of Directors may not have the funds necessary to carry out their responsibility to provide essential services to owners and to maintain and operate the Association.

Tips Regarding Assessments:

- If you do not believe you have received notice from the Association on when your assessments are due, the amount of the assessments, and the method you should utilize to pay them – don’t wait for your Association to provide you with this information. Instead, *be proactive* in obtaining this information so you will not run the risk of becoming delinquent. Failure to receive this information from the Association does not extinguish your obligation under the Declaration to pay assessments.

- If you experience a major life event (e.g. loss of a job, catastrophic illness, etc.) that makes it difficult for you to pay your assessments in full or in a timely manner – share this information with the Board of Directors as quickly as possible. Have a dialogue with your Board about making alternate payment arrangements until you are on your feet again.

- It is important to understand that it is the fiduciary duty of the Board of Directors of the Association to collect assessments. Any legal steps the Board takes to collect delinquent assessments consistent with Declaration or Colorado law, are not intended to be a personal attack. Instead, the Board is fulfilling its legal duty to the Association. You should also be aware that if the Board is forced to take legal action to collect assessments, the delinquent homeowner will ultimately be required to pay the Association's legal fees.

- You should be aware that the Aspen Pitkin County Housing Authority may also be empowered to take action against owners who do not pay their assessments. To learn more about the authority of APCHA relating to assessment delinquencies, please call 970-920-5050 or visit the following website: <http://www.aspenhousingoffice.com/>.

Insurance Obligations of the Association and Unit Owner

Q: Is the Association required to insure any portion of my unit?

A: The Declaration outlines the responsibilities of the Association *and* owners to insure portions of individual units and any common areas of the Association. If the Declaration does not specifically outline the responsibility of the Association to insure any portion of your unit, you can safely assume the insurance responsibility for the unit rests with you. You should carefully review the following provisions of the Declaration to determine the insurance responsibilities of the Association and unit owners: Article VIII.

Tips Regarding Insurance:

- Under no circumstances is the Association required to insure the contents of your home. As a result, in addition to any other insurance coverage you are required to maintain under the Declaration or your mortgage, make sure you carry an HO-6 policy that includes the following four basic coverages: unit coverage, personal property coverage, liability coverage and loss assessment.

- If you are unsure – or if the Declaration is unclear – about the insurance coverage homeowners are required to maintain, it's smart to work with an insurance professional to ensure you are carrying adequate coverage. It's not the responsibility of the Association to ensure that owners carry appropriate insurance coverage.

Maintenance Obligations of the Association and Unit Owner

Q: Is the Association required to maintain any portion of my unit?

A: The Declaration outlines the responsibilities of the Association *and* owners to maintain portions of individual units and any common areas of the Association. If the Declaration does not specifically outline the responsibility of the Association to maintain any portion of your unit, you can safely assume the maintenance responsibility for the unit rests with you. You should carefully review the following provisions of the Declaration to determine the maintenance responsibilities of the Association and unit owners: Section 2.4 (Limited Common Elements), 3.7 (Easements in Units for Repair, Maintenance and Replacement), 4.3 (Common Elements, Parking and Utilities), and 7.10 (Maintenance of Units and Common Elements).

In particular, Article IV, Section 4.3 of the Declaration outlines the maintenance responsibilities of the Association and provides in part:

“(a) Except as provided in Paragraph 2.4 regarding limited common elements, the Association shall be obligated to and shall provide for the care, operation, management, maintenance, improvement, repair and replacement of the common elements and for utility service to the common elements and to units. Without limiting the generality of the foregoing, said obligations shall include keeping the common elements in good, clean, attractive and sanitary condition, order and repair; removing snow

and any other materials from the common elements to permit access to the project and any unit; keeping the project safe, attractive and desirable; making necessary or desirable alterations, additions, betterments or improvements to or on the general common elements; and paying utility charges except separately metered utilities which shall be paid by the owner or user of the space served thereby. . .

(Note: Common Elements are defined in Article I, Section 1.5 of the Declaration as “all portions of the project other than units.”)

(c) Maintenance, repair or replacement of any drainage structure or facilities, or other public improvements required by the City of Aspen as a condition of development or any part thereof shall be the responsibility of the Association, unless such improvements have been dedicated to and accepted by the City of Aspen for the purpose of maintenance, repair or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.”

Article II, Section 2.4 of the Declaration provides that *with the exception of parking spaces* discussed in Paragraph 4.3(a), the limited common elements shall be maintained by the owners of units to which the limited common elements have been allocated.

Note: The specific items outlined may not include all of the maintenance requirements for the Association. Further, these requirements may change by amendment of the Declaration. You should carefully review the Declaration and amendments to determine the full maintenance, repair and replacement responsibilities of the Association *and* owners.

Tips Regarding Maintenance:

- It is essential to comply with any maintenance obligations required by the Declaration. Failure to comply with these maintenance obligations constitutes a covenant violation which may result in you being subjected to a fine by the Association.
- By fulfilling your maintenance obligations, you are doing your part to ensure the property values of the Association are maintained and even enhanced.

Use of Common Areas

Q: Is it true that in some cases only designated homeowners are able to use specified portions of the common areas?

A: Sometimes. The declaration of an association will describe what areas are common areas (sometimes referred to as common elements) which are generally designated for use by all of the residents of the association. In some cases, a declaration will define certain property as “limited common area” or “limited common element” which can be utilized only by specified individuals. For instance in a condominium association, a balcony may be defined as limited common area which is for the exclusive use of the residents of that particular condominium unit.

To determine what is defined as common area or limited common area in your Association, please review the following provisions of the Declaration:

Common Area: Section 1.5 (Common Elements) and 2.11 (Unit Boundaries; Subdivision). Generally, the Common Elements are all portions of the community other than the Units.

Limited Common Area: Sections 1.11 (Limited Common Elements), 2.4 (Limited Common Elements), 2.11 (Unit Boundaries; Subdivision), and 4.3 (Common Elements, Parking and Utilities). Limited Common Elements generally consist of those portions of the Common Elements designated for the exclusive use of Owners of particular Units, including but not limited to: (i) parking spaces; (ii) storage units; (iii) any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture that lies partially within and partially outside the designated boundaries of a Unit that serves

only that Unit; and (iv) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries.

Tips Regarding Use of Common Area:

- Since common area is for the use of all of the residents of the Association, do not place anything permanently or semi-permanently on the common area without first obtaining permission from the Board of Directors.

- Check with the Board of Directors to find out whether – in addition to the use restrictions in the Declaration – there are any rules or regulations addressing the use of the common areas.

- If you have exclusive use of a limited common area, review the Declaration for any guidelines that may regulate your use.

Use Restrictions

Q: Are there any use restrictions that I need to be aware of?

A: Yes. The Association you live in is a covenant-controlled community. That means there are some activities that are regulated by the Association. Activities commonly regulated by associations pertain to pets, parking, and landscaping – to name a few.

The Declaration outlines the use restrictions of this Association at Article VII. Here is list of all of the items addressed in the use restriction section of the Declaration:

1. **Occupancy and Resale Deed Restrictions.**
2. **Restrictions on Use and Subdivision.**
3. **Common Elements Restrictions.**
4. **No Imperiling of Insurance.**
5. **No Violation of Law.**
6. **No Noxious, Offensive, Hazardous or Annoying Activities.**
7. **No Unsightliness.**
8. **Restrictions on Signs.**
9. **Antennas.**
10. **Maintenance of Units and Common Elements.**
11. **Owner Caused Damage.**
12. **No Impairment of Structural Integrity.**
13. **No Violation of Rules.**
14. **Responsibilities of Owners.**

Tips Regarding Use Restrictions:

- If you are unsure whether an action you are planning to take may violate a use restriction, contact the Board of Directors for guidance prior to acting.

- Violation of a use restriction may ultimately subject you to a fine from the Association.

- In addition to the use restrictions in the Declaration, contact the Board of Directors to determine whether there are any other rules or regulations you should be aware of.

Reserve Account Requirements

Q: Is my Association required to have a reserve account?

A: The declarations of many associations require the board of the association to create and contribute funds to a reserve account. As a general rule, reserve accounts are created for the

purpose of saving the funds necessary to be utilized at a later date for the repair and replacement of physical assets of the association. For instance, an association may make contributions to a reserve account for the purpose of replacing asphalt on a periodic basis. The physical assets that an association is responsible for repairing or replacing are typically outlined in the declaration of each association.

The issue of reserves is addressed in the Declaration of this Association at Sections 6.3 and 6.12.

Board Authority

Q: What authority does the Board of Directors of this Association have?

A: In addition to the authority granted to the boards of associations under Colorado law, the powers of boards are typically found in the bylaws. As a general rule, association boards are granted the broad authority to carry out the operations and management of the association they serve. The authority of the Board of Directors of this Association is found in the Bylaws at Article V, Sections 2 and 3.

This FAQ is intended to provide you with a broad overview of just a few of the items in the Declaration and Bylaws that you should be familiar with. It is highly recommended that you review the Declaration and Bylaws to gain a more comprehensive view of the governance and operations of the Association and how this affects you – an owner of a unit in the Association.