

COMMON INTERESTS



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WHO OWNS PARKING SPACE P-22?

by **DONNA M. MASON**

If you serve on a Board of a condominium where parking spaces can be reassigned to different units as limited common elements, you may be surprised to discover that unit owners are transferring spaces invalidly without your knowledge or approval. A search of the land records may show that even though Mr. Jones is parking in space P-22 and paid good money for that space, it is really owned by Mrs. Smith who has no clue she owns it. How does that happen you ask? Sometimes this may be because they don't understand the process and other times because they think they are saving money on the transfer by not getting the Board involved. Often the invalid parking space transfer is discovered when an owner attempts to resell their parking space only to find out that they never actually owned the space or it is encumbered by a mortgage.

Here are the common mistakes being made:

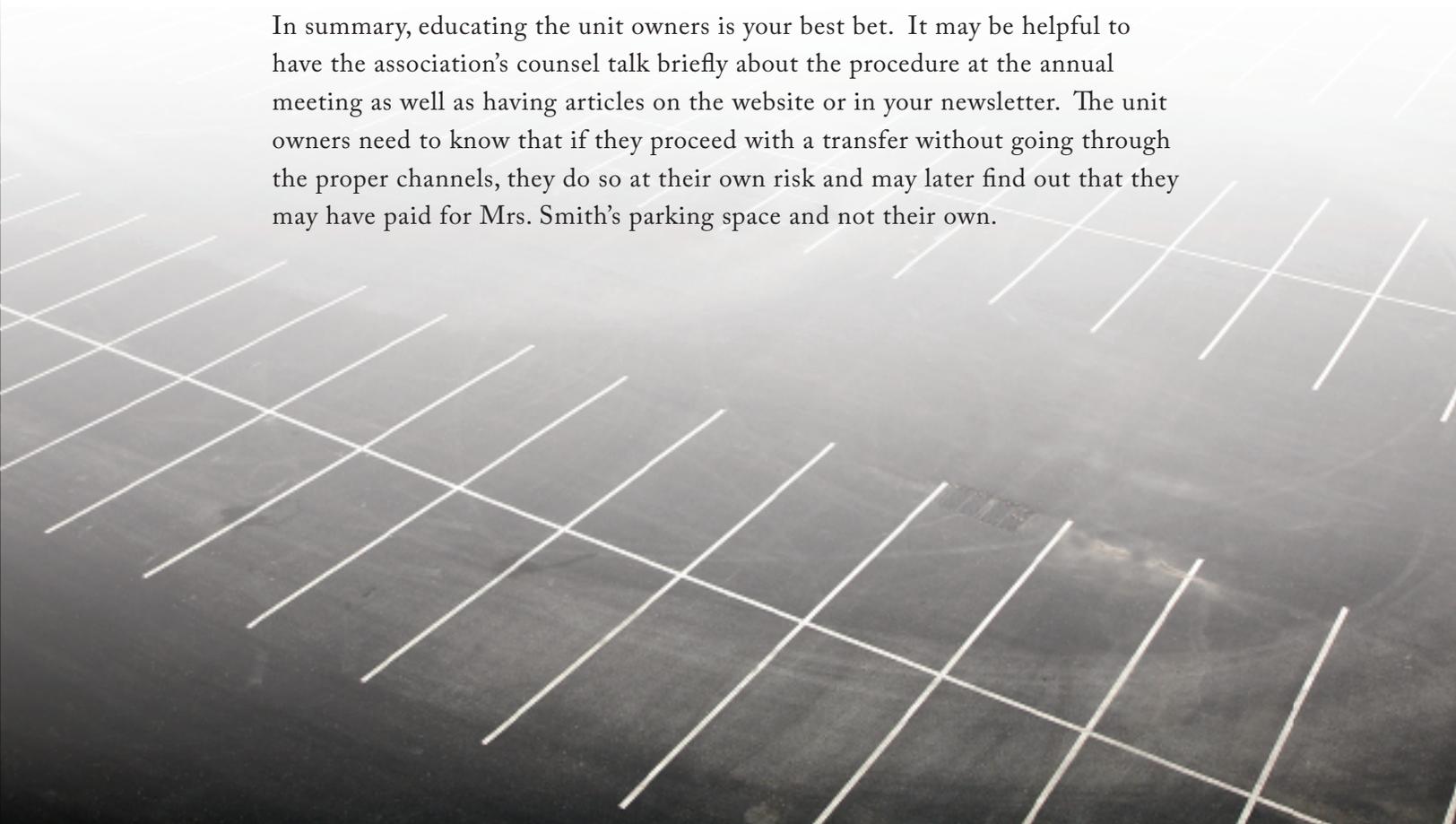
- Parking spaces transferred by a deed and not a recorded assignment of the limited common element amending the Declaration
- Parking spaces encumbered by the unit's mortgage without obtaining releases from the lender prior to transfer

- Unit owners not obtaining Board approval for the transfer
- Parking spaces being transferred informally without any recorded document at all
- All unit owners not joining in the execution of the assignment

How do you stop this from happening?

Your best bet is to educate your unit owners. A clear process for transferring a parking space needs to be put in place with advice of counsel. In compliance with the Virginia Condominium Act, the Board should not relinquish control of the process which the Board can ensure by requiring that the association's counsel order and review a full title search as well as prepare the transfer documents and handle recordation. The association's counsel should be the gate keeper to make sure that, after review of the title search, only the Board President approves the transfer when counsel gives it the "green flag". The unit owner should bear the expense of this transfer.

In summary, educating the unit owners is your best bet. It may be helpful to have the association's counsel talk briefly about the procedure at the annual meeting as well as having articles on the website or in your newsletter. The unit owners need to know that if they proceed with a transfer without going through the proper channels, they do so at their own risk and may later find out that they may have paid for Mrs. Smith's parking space and not their own.





HAPPY HOLIDAYS, HAPPY NEW YEAR!

by **ROBERT J. SEGAN**

We all want the holidays to be about peace and harmony, but soon the calendar turns to a new year, the lights come down and it is back to the disagreements that are inevitable in everyday life.

Boards are certainly not immune to these differences. In fact, sadly, the atmosphere at some Board meetings can be nothing short of toxic. What can a Board do when that happens?

Sometimes differences that should focus on policy become personal. Part of a Board member's fiduciary duty is not to let that happen. It is settled law that Board members are like trustees. They are managing the money and property of the owners, and they are held to the highest standard of loyalty to the interests of the owners as a whole. It is a violation of that duty to put one's personal interests above those of the owners. Your personal interests can include your passions and your ill feelings toward other Board members. Therefore, a Board member who deals in personalities and name calling is breaching his or her fiduciary duty.

The bottom line is, whether or not you like a Board member who conveys a view should be irrelevant to carrying out your fiduciary duty. The question should be "is the position he/she conveys in the best interest of the community?"

In fact, Roberts Rules of Order, which many association documents adopt by reference, has very strict rules on this. It is out of order to attack Board member's motives. Section 43 of Roberts even says "as much as possible, the use of names of members should be avoided in debate." Roberts requires that all remarks be addressed through the Chair, as is done in Congress or the British Parliament. Going to this extreme probably isn't required, but these rules underscore the Board member's duty to focus on policy rather than personalities.

Sometimes Boards that get off track due to personal issues can get reoriented with this exercise. Pass out a blank sheet of paper to each Board member. Then ask each to imagine it is the Association's next annual meeting, and you are presenting a list of what the Board has accomplished over the last year. What do you want to report to the owners that you have accomplished? Each Board member then makes a list and the lists are compared. Sometime Board members with personal differences are surprised at how closely their goals match. The discussion can then turn to means of accomplishing the goals that they share rather than the differences in styles, old feuds or who said what at a Board meeting three months ago.

Another method is to adopt a Code of Ethics. The Community Associations Institute has developed bullet points for a model code that can be your starting point. While Boards may not be able to require a Board members to sign the Code, the Association can note on the election ballot which candidates have agreed to the Code.

Virtually all association documents require a vote of the owners, rather than the other Board members, to remove a Board member. This is always difficult and usually impossible to achieve, so you are generally stuck with the others on the Board. Getting Board members to focus on policies and their responsibility to owners can get help to make your Board meetings more productive and peaceful during the coming year.



LET IT SNOW...

by **AIMÉE T.H. KESSLER** The weather outside is due to become frightful and we all have someplace to go, so we can't just "let it snow, let it snow, let it snow." And that brings up the annual questions – 1) from the owner: "Do I have to shovel my sidewalk?" and 2) from the Board: "Do we have to clear the walking paths?" The answer is dependent on both the governing documents of your particular association and the laws of the city or county where the association is located.

The governing documents – Declaration, Bylaws and/or rules and regulations – of your association may contain a requirement that the owner clear off the sidewalk adjacent to that owner's property. In that case, the owner would have to clear the snow off the sidewalk that ran along the property line whether or not the sidewalk itself was the owner's. As to the association itself, the requirement to maintain the common area may result in an obligation to clear walking paths, for example, of snow.

Your city or county may also have an ordinance that requires property owners to clear the sidewalks adjacent to their individual properties. "Property owner" will be either the individual owner or the association that owns the common area. In Fairfax and Prince William, there is no local law

requiring snow removal but property owners are encouraged to do so for the community's safety. Loudoun requires that snow and ice be removed from sidewalks adjacent to the owner's property within 6 hours of the snowfall stopping, or by noon if the snow or ice develops overnight. Alexandria and Arlington also require that snow and ice be removed by the adjacent property owner within 24 or more hours depending on the severity of conditions. Those localities with snow removal requirements do have some exceptions, such as in the case of the elderly or infirm.

Your insurance agent should be contacted to determine the Association's exposure in the case of the "Owner Who Fails to Clear the Sidewalk" or the "Path that is Difficult to Clear as It Is Made of Dirt". While snow and ice removal expenses can vary year to year, depending on that pesky groundhog and his shadow, it is important to know the association's responsibilities for budgeting purposes both in terms of the work that may need to be done and the insurance coverage that needs to be maintained.

We encourage you to contact legal counsel to determine the extent to which the local laws and/or governing documents create an obligation to clear snow on both the owners and the association's part. Once you know where you stand, you might be more comfortable going out in the storm.



THANKS FOR READING!

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