

## Can Fairway View Condominiums designate an area for a community garden?

SE Common Area: Amending the Declaration (Article 12 of CC&Rs) & 12.1 a. states....

- a. Except where a larger vote is required by law, this declaration may be amended from time to time by consent or approval of the apartment owners holding 60% or more of the voting rights as otherwise set forth in this Declaration. Provided, however, no amendment of the Declaration reducing or eliminating the right of any first mortgagee shall be made without written consent of all such mortgagees.

ANSWER: This is pretty straightforward. Amending the Declaration requires at least 60% approval votes of unit owners, but reducing or eliminating the right of any first mortgagee requires written consent of all mortgagees. Let me know if you needed further explanation on this.

b. Should the recommendation of the Committee, based upon a sound rationale, be to allow the use of the SE Common Area, or part of it, as a Community Garden:

ANSWER: Common areas are subject to Article 4 of the Declaration. Nothing in the CC&Rs implies you cannot use that portion of the common area as a community garden. This question is left to the discretion of the Board. A CC&R amendment is not necessary. In particular, Section 4.1 authorizes the Board to limit uses of the common areas.

c. We believe a 60% approval vote to amend the CC&Rs would apply as long as it can be demonstrated that: a. All apartment owners have equal opportunity to use the Area b. Clean slate each year c. Drawing or Lottery

d. There are standards regarding the appearance of the Area

e. There is a process and its documented and the gardeners acknowledge their acceptance of it.

f. Therefore, there will be no reduction or elimination of any rights A 60% approval vote to amend the CC&Rs would be valid so long as it meets the voting requirements set forth in the CC&Rs and Bylaws.

ANSWER: A 60% approval vote to amend the CC&Rs would be valid so long as it meets the voting requirements set forth in the CC&Rs and Bylaws. Your comments in (a)-(f) above have no effect on whether CC&R amendment votes are valid. I do not believe that an amendment is necessary to achieve this goal. But, such an amendment, if adopted, would be valid. Section 4 and 4.1 of the CC&Rs requires that the common areas be used in accordance with the rules and regulations as may be promulgated by the Association. If you think of the Declaration as the "Constitution" of the Association, and the Rules and Regulations as the "Statutes," this use can be accomplished by statute, without having to amend the constitution. But, certainly, amending the constitution would also be valid, and would be more authoritative.

Questions presented to Harker Lepore Attorneys February 2021.