

LAW OFFICES

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May 6, 2024

Ms. Carol Schwartzkopf
Villas at Parkside Homes Association
15817 West 61st Street
Shawnee, Kansas 66217

Re: Questions Regarding Declarations

Dear Ms. Schwartzkopf:

The Board has asked me to analyze and prepare a response to certain questions regarding the interpretation of the Declarations in connection with the obligation of owners to make repairs. My responses are as follows:

Question: What is the Association's responsibility to paint the exterior of a window frame or trim or repair stucco if a Unit owner replaces a window due to wood rot or for other reasons?

Answer: The Association is not responsible for repairing wood rot or painting the exterior window frame if a window is replaced. The Unit owner is also responsible for any wood rot, mold, or damage to the exterior stucco if a leaking window caused damage to the exterior of the building, window frame, or stucco.

Article III, Section 2(h) of the Amended and Restated Declaration of Covenants, Restrictions, Assessments and Easements of Villas at Parkside ("Declaration") states that each Unit owner shall maintain and repair the owner's Unit, except for the specific items listed as the Association's responsibility in Article VIII, Section 1 of the Declaration. Article VIII of the Declaration provides that the owner of a Unit "shall repair and maintain in good condition at all times the interior of the nit, and all components thereof, owned by that unit owner." This includes exterior painting, damage to wood, and repairs when an owner is replacing a window. The Unit owner is also responsible for any repairs necessary due to the failure of a Unit owner to properly maintain and repair its Unit.

Questions: What is the Association's responsibility for damage to the interior of a Unit or to personal property within the Unit if there is a roof leak?

Answer: The Association's insurance would cover damage to built-in or installed improvements, fixtures and equipment that are part of a Unit, but the Unit owner's insurance would be responsible for damage to personal property and other losses.

The Association carries fire and extended coverage against loss or damage by fire, lighting, and such other perils as are ordinarily insured against by standard extended coverage endorsements. This coverage is for all buildings, structures, fixtures and equipment and the Association's personal property and supplies. As for damage to a Unit covered by insurance, Article X of the Declaration states that the Unit owner is responsible for the deductible or other noncovered loss under the Association's insurance on any property damage or casualty loss to the owner's Unit, unless the damage or casualty loss is caused by the negligence or willful misconduct of another Unit owner or his occupant, in which case the other Unit owner shall be responsible for such deductible or other noncovered loss.

Each Unit owner is responsible to obtain insurance to cover losses with respect to personal property and furnishings, and similar matters of the type and nature of coverage commonly referred to as "tenants' improvements and betterments" or an "HO6" policy. If a loss is not covered by insurance proceeds from the Association's insurance policy, the Association shall not have any responsibility to repair the interior of any unit, or component thereof, or personal property within any unit. Furthermore, the Association shall not have any responsibility for the repair of any damage caused by the gross negligence or willful misconduct or accident of a unit owner or their family members, tenants, guests or contractors (which repair shall be the responsibility of the unit owner).

The Declaration goes on to say that in the event a unit owner fails to timely make a repair or perform maintenance required of that unit owner, or in the event the need for maintenance or repair of any part of the common areas is caused by the negligent or intentional act of any unit owner or occupant, the Association may perform the repairs and assess the unit owner for such costs incurred by the Association.

Question: What is the Association's responsibility for daily maintenance and repair of exterior wood rot, caulking, stucco maintenance, etc.

Answer: The Association is responsible for certain maintenance of certain exterior areas of units in connection with preparation for periodic painting of exterior surfaces at such times as the Association determines in its discretion; provided, however, this maintenance and repair is the obligation of a unit owner in connection with the replacement of windows or when its acts and omissions cause the need for repairs.

Article VIII, Section 1(c) of the Declaration described the obligations of the Association with respect to maintenance and repair in connection with preparing exterior surfaces for painting, removal of gutters or roof repair and replacement. Article VIII, Section 2 of the Declaration further states that each unit owner is responsible to "repair and maintain in good condition at all times the exterior of his or her Unit and related improvements" except for those specific items listed in Section 1 as the Association's responsibility.

In addition to questions about obligations to make repairs, the Board asked me to review the Declaration to determine the requirements to vote at a meeting to amend the Declaration or to increase assessments. The following summarizes our discussion:

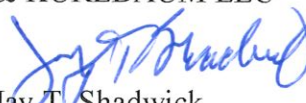
- Pursuant to Article XII, Section 3(a)(vii), the Board may increase annual assessments (a) without a vote of the members by up to 20% over the preceding year, or (b) at any time by any amount by a vote of the members at a meeting duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at the meeting and entitled to vote authorize such an increase. However, the Board, without a vote of the members shall always have the power to set annual assessment at an amount that will permit the Association to perform its duties under the Declaration.
- Pursuant to Article XII, Section 3(b)(i), the Board may levy special assessments for capital improvements to the extent reserves are insufficient, provided new capital improvements not replacing existing improvements shall not be constructed nor funds assessed, if the cost in any fiscal year would exceed 10% or more of that fiscal year's budget, without the prior consent of at least 60% of the Unit owners.
- Pursuant to Article XV, Section 1, any amendment to the Declaration requires the consent of at least 2/3 of Unit Owners, but the consent of at least 80% of Unit owners plus the City's consent is required to terminate the Declaration. Such consents must be in writing and attached to the amendment that is recorded with the county real estate records.

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I hope this letter is in the form you are looking for.

Very truly yours,

DUGGAN SHADWICK DOERR
& KURLBAUM LLC



Jay T. Shadwick