

RESPONSIBILITIES FOR REPAIR AND MAINTENANCE

INTRODUCTION

The purpose of this brief is to give the Board of Director's (Board's) position on the responsibility for repair and maintenance of various elements of our project, i.e., is it responsibility of the Homeowner or the Homeowner's Association (HOA). A secondary purpose is to provide the pertinent sections of the California Civil Code (CCC), the Condominium Plan (CP), the Covenants, Conditions, and Restrictions (CC&Rs), and the By-Laws that underlie the position taken by the Board.

The responsibility for repair and maintenance depends upon the ownership of the item. There are three classes of ownership.

Separate Interest – the aggregate of the living area, balcony or patio(s), and parking space(s) conveyed to the Homeowner by their deed, i.e. the Homeowner's Unit.

Common Area – All elements of the project that are not Separate Interests

Exclusive Use Common Area – Those portions of the Common Area that are dedicated to the exclusive use of a single homeowner.

- The Homeowner is responsible for the repair and maintenance of their Separate Interest and the Exclusive Use Common Area associated with their Unit. Note that the responsibility for repair and maintenance does not convey the right to unilaterally modify. Modifications to the Exclusive Use Common Area require written permission from the Board.

The HOA is responsible for repair and maintenance of all elements that are not considered Separate Interests or Exclusive Use Common Area.

SPECIFIC RESPONSIBILITIES FOR REPAIR AND MAINTENANCE

The identification of repair and maintenance responsibilities was based upon a review of the California Civil Code that deals with condominiums, the Condominium Plan, the Covenants, Conditions, and Restrictions, and the By-Laws. California Civil Code, particularly Sections 1351 and 1364, state that the Homeowner is responsible for repair and maintenance of anything that is dedicated to their exclusive use, subject to the CC&Rs.

It should be noted that the responsibility for repair and maintenance does not convey the right to unilaterally modify. Modification of any Common Area requires the written consent of the Board.

The following items are the responsibility of the Homeowner for repair and maintenance.

- 1) the circuit breakers within the Unit and all subsequent wiring, receptacles, switches, fixtures, light fixtures, door bells, etc., even if located within the walls, floor, or ceiling.
- 2) the circuit breaker for the Unit located within the main circuit panel for the building and the wiring from that circuit breaker to the circuit breakers within the Unit.
- 3) the faucets, valves, angle stops, etc. for a Unit and all subsequent plumbing, even if located within the walls, floor, or ceiling, e.g., the pipe between the shower faucet and the shower head.
- 4) Water pipes, solely used by the Unit, that connect to common water pipes, even if located within the walls, floor, or ceiling.
- 5) the sinks, tubs, showers, toilets, etc. and their associated traps.
- 6) sewer lines, solely used by the Unit, connecting the fixtures in the Unit to the common sewer lines.
- 7) windows, doors, and sliding doors and their associated frames, flashing, caulking, and other water or wind proofing mechanisms.
- 8) telephone wiring, wherever located, that is for the sole use of the Unit.
- 9) T.V. cable jacks and the cabling, wherever located, connecting them to the common cabling.
- 10) External vents and the ducts connecting them to appliances within the Unit.

Unfortunately, there have been many sewer blockages that have resulted in significant damage and cost. The on-site Manager now has a sewer snake and has been authorized to get outside help when necessary to "snake" a drain. Residents are **strongly** encouraged to contact the on-site Manager whenever their drains are blocked or seem slow. The Manager will arrange to have the drain "snaked" at no expense to the Unit.

OWNERSHIP INTERESTS

There are three classes of ownership interests: Separate Interest, Common Area, and Exclusive Use Common Area.

Separate Interest

CCC Section 1351 (1) (2) In a condominium project, "separate interest" means an individual unit, as specified in subdivision (f)

CCC Section 1351 (f) A "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. ...

CP Note 1 Del Mar Shores Terrace Condominium is a statutory condominium consisting of 87 residential units. A unit is composed of various elements, which are depicted on sheets 3-7, inclusive, of this condominium plan and are respectively defined in notes 2, 3, and 4 below.

CP Note 2 The boundaries of each living unit ("L") are the interior surfaces of the ceilings, floors, perimeter walls, windows and doors thereof as shown herein. The relative elevation of the interior surfaces of ceilings and floors are set forth in the schedule entitled "surface elevations" on this sheet. Horizontal dimensions are shown on sheets 3-7, inclusive. The following are not part of the unit: bearing and plumbing walls, soffits and central services, ducts, conduits, wire, and other utility installations, wherever located within any "element" of the unit, except the outlets thereof.

CP Note 3 Any balcony or patio element(s) appurtenant to a unit is designated by the letter "B" and followed by the number of the unit to which it is appurtenant and of which it is an element. The boundaries of each balcony or patio ("B") are the finished surfaces of the balcony or patio, the extension of the finished ceiling elevation of the appurtenant living unit, the exterior finished surface of the perimeter walls abutting the balcony or patio, and a vertical plane at the limits of the lateral dimensions shown with respect to each such balcony or patio. [Editorial note: Generally the vertical plane for a patio is the same as the vertical plane for the balcony above it.]

CP Note 4 The lateral boundaries of each parking space element ("P") are vertical planes at the limits of the horizontal dimensions shown on sheets 4, 5, and 6. The lower vertical boundary is the finished floor elevation and the upper vertical boundary is a plane parallel to and 8.00 feet above the finished elevation. ...

CC&Rs Section 1.1 "Condominium", in the context of this Declaration, means an estate in real property consisting of an undivided interest in common in the real property

constituting the Project, together with a separate interest in space in a residential building situated on such real property, and in other portions of the real property.

CC&Rs Section 1.2 "Unit" means the aggregate of the various elements, which constitute the separate interest in space of each Owner of a Condominium. The elements of the respective Units are shown on the Condominium Plan. [Editorial note: these elements are the living unit, the balcony or patio(s), and the parking space(s).]

Common Area

CCC Section 1351 (b) "Common Area" means the entire common interest development except separate interests therein. ...

CP Note 5 All real property shown on this plan not located within a "unit" is part of the common area.

CC&Rs Section 1.3 "Common Area" shall mean the Common Area as identified on the Condominium Plan and includes, of any building schematically or otherwise shown on the plan, the following: bearing walls, columns, floors, ceilings, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoirs, chutes, conduits, wires, and other utility installations, wherever located, except the outlets thereof when located within a Unit.

Exclusive Use Common Area

CCC Section 1351 (i) "Exclusive use common area" means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

- (1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.
- (2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

[Editorial note: The Condominium Plan and the CC&Rs are silent on the issue of Exclusive Use Common Area]

RESPONSIBILITY FOR REPAIR AND MAINTENANCE

CCC Section 1364 Responsibility For Repair, Replacement, Or Maintenance; Damage By Wood-Destroying Pests or Organisms; Cost Allocation; Notice Of Repair requirements; Access For Maintenance of Telephone Wiring.

- (a) Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest.
- (b) (1) In a community apartment project, condominium project, or stock cooperative, as defined in section 1351, unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms.
- (c) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

CC&Rs Section 5.1 Each Owner of a Condominium shall be responsible for the maintenance and repair of his Unit, and for keeping his Unit and all areas of which he has the exclusive right of use in a neat and tidy condition. The obligation of maintenance and repair extends to the glass doors and windows inclosing any part of the Unit, and to the maintenance and repair of all plumbing, electrical heating systems and appliances located within the Unit.

CC&Rs Section 3.8 ... If any Unit has outlets connected to a cable television system, it shall be the obligation of the Association to maintain, repair and replace all portions of said cable television system located within the Common Area.

CC&Rs Section 4.2 Except as otherwise provided herein, the Association acting through its Board of Directors and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in the By-Laws of said association and this declaration of Covenants, Conditions and Restrictions.

By-Laws Section 2 (f) Cause the Common Area to be maintained; and to pay all taxes or assessments which are or could become a lien on the Common Area.

RIGHT TO MODIFY

CCC Section 1360 Modification Of Unit By Owner; Facilitation Of Access For Handicapped; Association Approval

- (a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:
 - (1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.
 - (2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. ...
- (b) Any change in the exterior appearances of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

CCC Section 1376 Installation of Video and Television Antenna.

- (a) Any covenant, condition, or restriction contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, a common interest development that effectively prohibits or restricts the installation or use of a video or television antenna, including a satellite dish, or that effectively prohibits or restricts the attachment of that antenna to a structure within that development where the antenna is not visible from any street or common area, except as otherwise prohibited or restricted by law, is void and unenforceable as to its application to the installation or use of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less.
- (b) This section shall not apply to any covenant, condition, or restriction, as described in subdivision (a), that imposes reasonable restrictions on the installation or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less. For purposes of this section, "reasonable restrictions" means those restrictions that do not significantly increase the cost of the video or television antenna system, including all related equipment, or significantly decrease its efficiency or performance ...

CC&Rs Section 3.7 ... However, no Owner shall have the right to paint or stain any exterior surface of his Unit without the written consent of the Board of Directors of the Association.

CC&Rs Section 3.9 Nothing shall be done in any Unit or in, on, or to the Common Area which will impair the structural integrity of the buildings, or which would structurally change the buildings. Nothing shall be altered or constructed in or removed from the common area, except upon the written consent of the Board of Directors of the association. ...

CC&Rs Section 3.12 No Owner shall make any alteration or improvement to the Common Area, or remove any planting, structure, furnishing or other object therefrom except with the written consent of the Board of Directors of the Association.

CC&Rs Section 5.1 ... Each Owner shall have the right, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, and perimeter walls and partitions located within his Unit. Each Owner shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors and walls. In the event an Owner fails to maintain the interior of his Unit and the plumbing, electrical and heating systems thereof, or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board of Directors of the Association to preserve the attractive appearance thereof and to protect the value thereof, the Board shall give written notice to such Owner ...