

Legal Opinion of Jeremy Tucker, Esquire

Provided for the Board of Directors of The Villas at Cattail Creek

Transmitted by e-mail dated June 16, 2015

RE: Window Wells and Grading of Land

We understand a Unit Owner has complained of water leaks around his window well and from the gutters on his roof. We are writing to address who is responsible for repairing the window wells, the yard areas, and the gutters on the Unit roofs in this situation.

As we discussed, the Section 11-108.1 of the Maryland Condominium Act sets forth the default maintenance, repair and replacement obligations for condominiums and provides:

Except to the extent otherwise provided by the declaration or By-Laws, and subject to § 11-114 of this title, the council of unit owners is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit.

The common elements include the general common elements and the limited common elements. Thus, we must turn to the Association's By-Laws to determine if the By-Laws provide otherwise, starting with a review of definition of a Unit and a Common Element.

The definition of a Unit is found in Article III of the Declaration and provides in relevant part in sub-subsection (ii) as follows:

(ii) Improvements. Each exterior or interior wall, part of party wall, roof...gutter...or other improvement or structure...which integral part of, which is either (i) is in the airspace defined above, (or (ii) is not in such airspace but from a connect and integral part of, or is appended or affixed to the improvement in such airspace...."

Based on this, the exterior of a Unit and the gutter are expressly part of the Unit. While the window well is not specifically listed, it is affixed to the Unit, and thus is part of the Unit.

The front and side yard areas are not included in the definition of a Unit. Since they are not part of the Unit, the yard areas are common elements. In particular, Article V, Section (a)(i) of the Declaration provides that the front and side are limited common elements of the Unit to which they are appurtenant, and defines them as Yard Limited Common Elements.

As we now know how each of the relevant condominium components are classified, the we need to determine how the By-Laws assign the maintenance, repair and replacement obligation for the exterior of the Unit, the window well, the gutter, and the Yard Limited Common Elements. Article XIII of the By-Laws sets forth the specific maintenance, repair and replacement obligations for the Association. Article XIII, Section 1 addresses the Unit Owners' general maintenance, repair and replacement obligations providing:

Maintenance by Owners. Except as otherwise provided in Section 2 of this Article XIII, each Unit Owner shall maintain, repair and replace all portions of his Unit and the Limited Common Elements, and each improvement thereon or therein, except those portions of or duties with respect to the Limited Common Element or Units which are, under the provisions of the Declaration or these By-Laws, to be undertaken by the Council....(Emphasis added).

As you would anticipate, Article XIII, Section 2 of the By-Laws sets forth the Association's maintenance, repair and replacement obligations. The relevant provisions are contained in Section 2(A) & (C) and provides as follows:

(A) All maintenance, repair and replacement of the General Common Elements (roads, street lighting, curbs and gutter, water and sewer facilities located in the General Common Elements) as well as roofs, leadwalks and exterior walls (including exterior surfaces siding and brick) for and of each Unit, including structural repairs and replacements; (Emphasis added).

(C) All landscaping and maintenance of lawns in the General Common Elements and the Yard Limited Common Elements, provided, that a Unit Owner shall be solely responsible for any landscaping, flower beds and the like installed by such Unit Owners on the Yard Limited Common Element appurtenant to his Unit.

Based on the above, even though it is part of the Unit, the Association is obligated to maintain and repair the exterior of the Units, which includes the exterior of the window wells, as the window wells are part of the Unit for the reasons stated above. The Association is further obligated to repair the Yard Limited Common Elements, which would include grading. The Association is not obligated to maintain the gutters of the Unit, because the above-quoted Article XIII, Section 2(A) only addresses gutters in the General Common Elements not those in the Units nor is the Association obligated to maintain the window well itself, just the exterior as the window well is part of the Unit and not listed in Article XIII, Section 2 of the By-Laws.

Therefore, if the cause of the water leak is due to a problem with the exterior of the window well or the grading of the Yard Limited Common Element we believe the Association is obligated to make the appropriate repairs. If the problem is with the window well itself, such as failing to drain, or due to the gutters, the Unit Owner is obligated to repair that issue. We suggest having your landscaper review the grading of the Yard Limited Common Element and take a look at the drainage in the window well.

I know you are meeting tonight and I wanted to get this to you. However, I would like to discuss some other practical considerations when you get a chance. In the meantime, please let me know if there any questions.

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Engineering for sewer relocation

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John Gilman, Sales, 410-841-6710,

I do not agree with Mike's interpretation of the Declaration and ByLaws. The ByLaws are consistent in with regards to the Unit Owner being responsible for pipes contained in the Unit or Limited Common Element serving one unit.

Under Section 1. Maintenance by Owner the ByLaws state:

A. Any heating and air conditioning systems, hot water heaters, smoke detectors, fixtures, equipment and appliances and all chutes, flues, ducts, conduits, wires, pipes or other apparatus installed or contained within the Unit or located in the Limited Common Elements

F. All chutes, flues, ducts, conduits, wires, water pipes, sewer pipes, sprinkler pipes and condensate lines or other apparatus whether or not installed or contained within the Unit, but excluding only that one item including the inspection, cleaning or flushing of all such items at least once annually;

Under Section 2. Maintenance by Council the ByLaws state:

A. Any heating and air conditioning systems, hot water heaters, smoke detectors, fixtures, equipment and appliances and all chutes, flues, ducts, conduits, wires, pipes or other apparatus installed or contained within the Unit or located in the Limited Common Elements.

Declaration Page 14

(d) Repair, Condition and Appearance of Units and General Common Elements. Except as provided in herein or in the By-Laws, the Unit Owners shall be responsible for maintaining their Units in good order, repair and in an attractive appearance. The maintenance of the General Common Element & and Limited Common Elements shall be performed by the Condominium Association in accordance with the provisions of this Declaration and the Condominium By-Laws.

ByLaws pages 23-26

ARTICLE XIII
MAINTENANCE, REPAIR AND REPLACEMENT

Section 1. Maintenance by Owners. Except as otherwise provided in Section 2 of this Article XIII, each Unit Owner shall maintain, repair and replace all portions of his Unit and the Limited Common Elements appurtenant thereto, and each improvement thereon or therein, except those portions of or duties with respect to the Limited Common Elements or Units which are, under the provisions of the Declaration or these By-Laws, to be undertaken by the Council. Each Unit Owner shall keep his Unit and the Limited Common Elements appurtenant to his Unit in an orderly, neat and clean condition.

By way of example and not as a limitation, the following items of maintenance, repair and replacement all be performed by the Unit Owners and such maintenance, repair and replacement shall not be the

responsibility of the Council or an item of Common Expense:

A. Any heating and air conditioning systems, hot water heaters, smoke detectors, fixtures, equipment and appliances and all chutes, flues, ducts, conduits, wires, pipes or other apparatus installed or contained within the Unit or located in the Limited Common Elements. Additionally, to prevent freezing of any water in any pipe, plumbing fixture or other facility in the Condominium, and to minimize the heating costs of any adjacent Units and Common Elements, each Unit Owner, at his own expense, shall maintain the temperature inside his Unit at not less than 62 degrees Fahrenheit throughout each calendar year. Furthermore, each Unit Owner shall shut off any water main serving such Unit if the Unit Owner will not be residing in the Unit for more than five (5) consecutive days.

B. All windows, storm windows, screens and the exterior door, garage door, storm door and exterior door and window frames including any sliding glass doors and the seals or glazing thereof (and further provided, any replacements of windows and doors may only be replaced with similar materials);

C. The washing of all exterior windows and the replacement of all glass;

D. The painting, where applicable, of the exterior surface of all doors and door frames, windows and window frames;

E. Fireplaces, including the inspection and cleaning of all fireplaces and fireplace flues at least once annually, however, the replacement of any flue stack serving more than one Unit shall be the responsibility of the Council;

F. All chutes, flues, ducts, conduits, wires, water pipes, sewer pipes, sprinkler pipes and condensate lines or other apparatus whether or not installed or contained within the Unit, but serving only that one Unit, including the inspection, cleaning or flushing of all such items at least once annually;

G. The Limited Common Elements appurtenant to the Unit including decks and patios; and

H. Any alteration or modification to a Unit or to the Limited Common Elements appurtenant thereto unless such responsibility is expressly assumed by the Council in the architectural approval of same.

Each Owner shall perform such maintenance, repairs and replacements in such manner and at such hours as to not unreasonably disturb any other Unit Owner.

In the event any Owner fails to maintain, repair or replace all portions of his Unit or Limited Common Elements as set forth herein, it shall be deemed a violation of these By-Laws, and, in addition to the right of entry by the Council to remedy the violation, the Council may assess the Owner for any expenses incurred by the Council (including but not limited to administrative costs and attorneys' fees relating to pursuit of the violation) for maintenance, repair or replacement of the Unit, the Limited Common Elements or for repairs or replacements to other Units or the Common Elements resulting from the negligent act, the failure to act, or the failure of such Owner, his family members, tenants, invitees or other user of the Unit to maintain, repair or replace all portions of the Unit. Such expenses may be levied and the collection of such expenses may be enforced against the Owner in the same manner as regular Assessments.

Section 7. Maintenance by the Council Except as provided elsewhere in the Declaration or these By-Laws, the Council shall maintain, repair, and replace all Common Elements, the costs of which shall be a Common Expense; provided, however, the Council shall not be responsible for replacement of any Limited Common Elements.

By way of example and not as a limitation, the following items of maintenance, repair and replacement shall be performed by the Council and such maintenance, repair and replacement shall be an item of Common Expense:

A. All maintenance, repair and replacement of the General Common Elements (roads, street lighting, curbs and gutter, water and sewer facilities located in the General Common Elements) as well as roofs,

leadwalks and exterior walls (including exterior surfaces such as siding and brick) for and of each Unit, including structural repairs and replacements;

B. The removal of snow and ice from the General Common Elements (i.e., roads); provided, however, the Council shall not be required to remove snow and ice from any common pathways/sidewalks located between the Units;

C. All landscaping and maintenance of lawns in the General Common Elements and the Yard Limited Common Elements, provided, that a Unit Owner shall be solely responsible for any landscaping, flower beds and the like installed by such Unit Owner on the Yard Limited Common Element appurtenant to his Unit; and

D. The removal of all snow and ice from the driveways, front leadwalks and front stoops.

Section 3. Additions, Alterations, Improvements and Decorations.

(a) Except as otherwise provided herein or in the Condominium Declaration, or in Subsection (b) of this Section 3, no Unit Owner, except the Condominium Developer, shall make (i) any structural addition, alteration or improvement to his Unit or any Limited Common Element which he has the right to use, or (ii) any non-structural addition, alteration, improvement or decoration to or upon the windows and doors enclosing his Unit, or to or upon any Limited Common Element which he has the right to use including, without limitation, installation of any landscaping, flowers or the like, or the addition of any awning or screen to any window, door, patio or balcony, unless and until plans and specifications, in duplicate, showing the nature, kind, shape, height, color, materials, location and approximate cost of such addition, alteration, improvement or decoration shall have been submitted to and approved in writing by the Architectural Committee (or Condominium Board, if applicable) which shall have the right for good cause to refuse to approve any such plans or specifications which it deems unsuitable or undesirable, whether based on aesthetic or other reasons. If the Architectural Committee (or Condominium Board, if applicable) fails to deny any requested addition, alteration, improvement or decoration within sixty (60) days after receipt of two (2) complete sets of plans and specifications therefor, such request shall be deemed approved. The Architectural Committee appointed under Article II, Section 2, shall serve until the earlier of: (i) the date all Units have been conveyed to an Owner occupying the same as his/her residence, (ii) the date the Architectural Committee, in its sole and absolute discretion, determines that it no longer desires to designate the members of the Architectural Committee and such determination is evidenced in writing to the Condominium Association, or (iii) the date the Architectural Committee is dissolved or no longer exists. Thereafter, all plans and specifications shall be submitted to the Condominium Board for approval in accordance with the provisions herein. The plans and specifications for any addition, alteration, improvement or decoration approved by the Architectural Committee or the Condominium Board, as the case may be, and actually constructed or installed shall be filed and maintained at the principal office of the Condominium, and, if appropriate, the Condominium Plat shall be amended to reflect any such addition, alteration or improvement.

(b) The Architectural Committee, or Condominium Board, if there is no Architectural Committee, may adopt reasonable rules and regulations as provided herein establishing general standards for the making of one or more types of non-structural addition, alteration, improvements or decorations to or upon the windows and doors enclosing the Units or to or upon the Limited Common Elements. Such rules and regulations may provide that to the extent any particular addition; alteration, improvement or decoration is made in compliance with such general standards, such addition, alteration, improvement or decoration may be made without the submission of plans and specifications therefor to the Architectural Committee or Condominium Board, as the case may be, and without written approval by the Architectural Committee or Condominium Board, as applicable, of said plans and specifications.

(c) For the purposes of the Condominium Declaration, and of this Section 3, a structural addition, alteration or improvement to a Unit shall include, without limitation, any addition, alteration or improvement involving any portion of the Unit (such as a utility line or duct serving that Unit) located above the top surface of any sheetrock ceiling within the Unit, whether such ceiling is a drop ceiling or is located at the upper

boundary of the Unit.

Section 4. Water, Gas and Electricity. Electricity and gas are furnished to the General Common Elements through a separate meter or meters designed for the property held in common, and the Condominium Board shall pay, as a Common Expense, the cost of all electricity and gas furnished through said meter or meters. Gas and electricity furnished to the Units (and to certain Limited Common Elements appurtenant to each Unit) through separate meters, and each Unit Owner shall pay for all gas and electricity furnished through a separate meter to his Unit and to the Limited Common Elements appurtenant thereto. Water is furnished to the General Common Elements, the Units and the appurtenant Limited Common Elements through a single meter, and the Condominium Board shall pay, as a Common Expense, the cost of all water furnished through said meter.