

March 3, 2017

Fairway Chase, Inc.  
C/o Seabreeze Realty & Property Management  
Attn: Board of Directors  
907 Belville Road  
South Daytona, FL 32119

**Re: Plumbing Responsibilities**

Dear Members of the Board:

Please accept this letter as the opinion letter you requested explaining the plumbing responsibilities contained in the Association's governing documents. This analysis requires a two step process. First, we need to determine the unit boundaries versus the common elements. Then, we proceed to the maintenance provisions to see the assignment of maintenance responsibilities.

The boundaries for the unit and the common elements are defined in Article 3.6 and Article 3.7 of the Declaration of Condominium. Article 3.6 of the Declaration of Condominium defines the unit boundaries as the lower surface of the roof trusses, the upper surface of the unfinished floor slab, and the undecorated, finished interior surface of the walls bounding the unit. With the exception of the air conditioning compressor serving the individual unit, everything else is part of the common elements according to Article 3.7 of the Declaration. Article 2.4 of the Declaration specifically denotes that the lanai attached to each unit and the driveway from the street to the garage are limited common elements.

Article 4 of the Declaration discusses the division of maintenance responsibilities between the Association and the unit owners. Specifically with regards to plumbing, Article 4.2 of the Declaration provides that the Association maintains "all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portion of a unit maintained by the Association; and all such facilities contained within a unit that service part or parts of the condominium other than the unit within which such facilities are contained." To paraphrase this provision, the Association is responsible to maintain all plumbing that services more than one unit as well as all

plumbing located outside of the unit boundaries. The unit owners are assigned the responsibility to maintain all plumbing located within the unit that only service that unit, and the plumbing fixtures and connections contained within the unit.

To take this analysis further, the next question to be answered is who is responsible for damage caused to the condominium property when there is a leak or malfunction in the plumbing. The answer depends on how the damage was caused and what portion of the condominium property is damaged. Section 718.111 (11), Florida Statutes, addresses this issue. This Section provides that in the event of a casualty, the Association must first determine what caused the loss. Once it determines the cause, it must then go to its master insurance policy and determine whether this type of casualty is covered by the Association's policy - without regard to deductibles and coverage dollar limits. If the type of loss is covered, then the statute makes the Association responsible for repairing all of the condominium property except the following:

.... all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

These limitations apply to all damaged units. This means that the Association is only responsible for restoring the unit to the drywall, but nothing else.

That being said, there is one major exception to the provisions noted above. If the cause of the damage was the negligence of a unit owner or the owner's guests, family or tenants, then the burden to pay for the repairs shifts to the negligent party. Article 4.2 (b)4 of the Declaration states that the unit owner is responsible "to pay for the repair, replacement or maintenance occasioned by negligence..." For example, if a unit owner runs the water in the bathtub and goes out leaving it running, when it overflows, the negligent owner is financially responsible for all damage, including damage to other units and to unit owner property, and to the Association for the portions of the condominium property that it must repair. The same is true if an owner fails to perform normal routine maintenance or fails to timely report a known condition or defect for which the Association may be responsible. Under Article 4.2(b)3 of the Declaration, an owner is required to promptly report to the Association any defect or need for repairs, the responsibility for which lies with the Association.

Alternatively, if the Association was aware of a maintenance issue or reasonably should have known of the existence of a maintenance issue and it did not take prompt

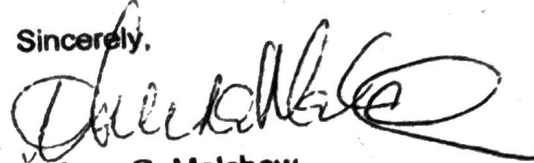
March 3, 2017

steps to correct the issue, the Association can be found negligent. In that case, the Association would be responsible for not only the repair but also all damage caused to the unit or units.

In the event that the cause of the loss is not covered by the master policy, and where no one has been negligent, then you would refer back to the division of maintenance responsibilities as outlined in Article 4 of the Declaration, i.e., the unit owners repair the unit and the Association repairs the common elements.

I trust that this letter fully addresses the question of plumbing maintenance. Should you have any questions or wish to discuss this matter further, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helena G. Malchow', with a large, stylized flourish at the end.

Helena G. Malchow

HGM/fms