

If It's Broke, Who Fixes It?

IDENTIFYING MAINTENANCE RESPONSIBILITIES TO ENSURE CONSISTENCY AND AVOID DISPUTES

Josh Rosenstein

Because identifying the responsibility for maintenance of some items within a condominium can be difficult, and to ensure consistent treatment as owners and board members change, some condominium associations create a maintenance table identifying the maintenance responsibility for all of the items within the condominium. The table should list all of the individual items or elements of the buildings and identify the responsibility for each item.

To determine who is responsible to maintain each item, you need to carefully analyze the condominium declaration in the context of the Washington Condominium Act (WCA). Start by examining how the condominium declaration and the WCA define where the common elements end and the units begin. Unless the declaration defines the boundaries differently, the WCA default definition fixes the location of the boundaries. The WCA default boundary line is the walls, floors, or ceilings of a unit, but there are exceptions in the law. In many cases, the boundary line between the common elements and the units in the declaration is the same as the default boundary line under the WCA. However, condominium declarations will sometimes define the boundary lines differently than the WCA default, and it can be confusing to determine whether an item that is "on the bubble" (such as drywall or window glass) is part of the unit or the common elements.

Under the WCA, the condominium association is responsible to maintain, repair and replace the common elements and the unit owner is responsible for the unit unless the condominium declaration allocates the responsibilities differently. The limited common elements, such as decks, parking spaces and storage areas, are a subset of the common elements, so under the WCA default rule, the association is also responsible for them. The declaration may make the unit owner responsible to maintain some limited common elements (such as decks), but not others (such as parking spaces). The association may even be allocated responsibility for certain items within the unit. If it is, the items are usually the kind which could affect other parts of the building if they are not properly maintained, such as chimneys and washing machine hoses.

A maintenance table is an easy way to list all of the responsibilities in one place. It may be necessary to hire a lawyer to help in the process. The board should adopt the table as part of the rules and regulations and publish it so that all owners and future board members have a handy reference and clear guide.

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Implementing a Maintenance Responsibility Table

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Consider taking these three steps to implement the responsibility table after it is initially completed:

Amend the Declaration to Change Responsibility:

The item that creates a great deal of confusion and discussion is window replacement. Often it is the Association's responsibility to replace the window unit. Does the board want to shift the maintenance responsibility from the Association to the homeowner? Another example that is often overlooked is window screens; shifting the responsibility from the Association to the homeowner. Determine the changes up front and draft one amendment that would incorporate all the changes. It might take some explaining and reasoning, depending on the changes, to convince the owners to vote for the amendment if it shifts more responsibility to the owner.

Compare the Components Listed in the Table to the Reserve Study Components:

Review the final component list in the table to the reserve study. In our example with window replacement, if the windows replacement is in the current study but is amended to shift the responsibility to the owner, make sure the reserve study is updated to reflect this change. This one change can have a big impact on the funding level of the current reserves and future contributions.

Write up a Resolution to Adopt the Final Table:

The final step to implementing the table after amending the declaration and comparing the components to the reserve study is signing a resolution. The resolution provides a history for the Association for the decision to adopt the table to establish the policy. The advantages to having a table, as Josh points out, is that it creates a clear guide for all owners and future board members to follow.

From my experience most associations have not completed this formal exercise on developing a responsibility table. Often maintenance responsibilities are passed without any formal process or interpretation of the legal documents. The end result is that inconsistent policies are passed by the board, change over time, and creates confusion with the homeowners.